

*United States Court of Appeals
for the Second Circuit*



APPENDIX

75-1058
IN THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B

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DOCKET NO. 75-1058

UNITED STATES OF AMERICA

PLAINTIFF-APPELLEE

VS.

HORACE MARBLE

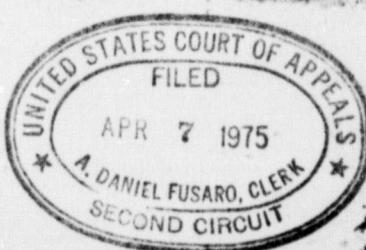
DEFENDANT-APPELLANT

APPENDIX TO BRIEF OF

DEFENDANT-APPELLANT

HORACE MARBLE

GREGORY B. CRAIG
COUNSEL FOR DEFENDANT-APPELLANT
770 CHAPEL STREET
NEW HAVEN, CONNECTICUT



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PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET **D**
UNITED STATES DISTRICT COURT

1pp 1

H74/172

D. C. Form No. 100 Rev.

| TITLE OF CASE | | ATTORNEYS | |
|-------------------|--|--------------------------------------------------------------------|--|
| THE UNITED STATES | | For U. S.: | |
| vs. | | Peter C. Dorsey, US Attorney | |
| HORACE MARBLE | | Albert S. Dabrowski, Asst US Atty 450 Main St., Hartford, Conn. | |
| | | | |
| | | For Defendant: | |
| | | Gregory Craig, Pub. Def. 450 Main St. Hartford, Conn. | |
| | | | |
| | | | |

| STATISTICAL RECORD | COSTS | | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|----------------------|------------|--|------|---------------------|------|-------|
| J.S. 2 mailed | Clerk | | | | | |
| J.S. 3 mailed | Marshal | | | | | |
| Violation U. S. Code | Docket fee | | | | | |
| Title 18 | | | | | | |
| Sec. 2113(a) | | | | | | |
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| | | | | | | |

| DATE | PROCEEDINGS |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1974 | |
| 11/15 | The Grand Jury at Hartford returned a True Bill of Indictment charging violation of 18 USC 2113(a) in one count - bank robbery, No summons to issue (Clarie, J.)m-11/18/74 |
| 12/4 | Application for Writ of Habeas Corpus Ad prosequendum and Order, filed. (Clarie, J.)m-12/5/74. Two attested copies handed U. S. Marshal for service. |
| 12/9 | PLEA of not guilty entered to one count. Two weeks for motions. Govt. has one week to respond. Govt. requests \$10,000.00 bond. Detainer to be lodged against Defendant with \$10,000.00 full surety. To be placed on January Trial List. Public Defender's office appointed to represent the defendant. (Clarie, J.)m-12/10/74 |
| 12/9 | Bench Warrant issued in duplicate and with certified copy of the indictment handed US Marshal for service. |
| 12/16 | Notice of Readiness, filed by the Govt. |
| 1975 | |
| 1/2 | Notice of Compliance With Standing Order For Discovery and Bill of Particulars in All Criminal Cases, filed. |

CONTINUED

A

| DATE 1975 | PROCEEDINGS |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1/3 | Court Reporter's Notes of Proceedings held on December 9, 1974, filed in Hartford. (Sperber, R.) |
| 1/10 | Defendant Marble's Proposed Findings of Fact and Conclusions of Law, filed. |
| 1/7 | Case #5 for jury selection. Motion To Suppress to be heard on Thursday morning. (Clarie, J.) |
| 1/10 | Government's Memorandum In Opposition To Defendant's Motion To Suppress and Government's Memorandum In Opposition To Defendant's Motion To Suppress, filed. |
| 1/8 | JURY TRIAL - Atty. Craig states he wishes to reserve right to file Motions for Discovery as case progresses - Atty. Craig requests time to file objections to jury selection plan, Request granted. (Clarie, J.) - Panel of 12 Jurors and 1 Alternate impanelled and sworn. (Clarie, J.) Voir Dire Questions filed by Atty. Craig. Notice of Compliance with Standing Order filed by the Govt. (Clarie, J.) Jury advised they will receive 48 hours notice as to when case will commence. (Clarie, J.) |
| 1/9 | HEARING ON MOTION TO SUPPRESS - Govt. Witness, sworn and testified. Atty. Craig moves to sequester witnesses - Atty. Grabowski makes same request, Motions Granted. - Govt. Witness sworn and testified - Govt. exhibits 1 and 2, filed. Govt. Rests at 2:12pm - Defendant sworn and testified - Defendant's Witness sworn and testified - Defense rests at 3:08pm - Witness recalled and testified - Briefs to be filed in 24 hours - Exhibits with Judge Clarie. (Clarie, J.) |
| 1/14/75 | Ruling on Defendant's Motion to Suppress (Clarie, J.) M 1/15/75 Copies to Attys. MOTION DENIED |
| 1/16 | Court Reporter's Sound Recording of Proceedings held on December 9, 1974, filed in Hartford. (Sperber, R.) |
| 1/14 | Endorsement entered and filed on Defendant Marble's Motion To Suppress, "January 14th 1975 The defendant Marble's motion to suppress is denied for the reasons set forth in the accompanying findings of facts; So ordered." (Clarie, J.) m-1/21/75 Copies sent to counsel of record. |
| 1/24 | Defendant Marble's Motion For A Continuance, filed. |
| 1/29 | JURY TRIAL COMMENCES : 13 Jurors report - Asst. US Atty. Dabrowski advises Court that Defendant wishes to withdraw not guilty plea - Right of Appeal reserved - CHANGE OF PLEA of guilty entered and accepted - Continued for pre-sentence report with Bond set at \$25,000.00 with full surety. Jury reports to courtroom and advised of plea. (Clarie, J.) Notice of Appeal, filed. Copies handed Attys. Dabrowski and Craig. |
| 1/30 | Certified copies of Notice of Appeal and Docket Entries mailed to USCA. |

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Moc.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. H-74-172

HORACE MARBLE :

I N D I C T M E N T

The Grand Jury charges:

COUNT ONE

On or about April 19, 1974, at West Hartford, in the District of Connecticut, HORACE MARBLE, the defendant, by force and violence and by intimidation, wilfully and unlawfully, did take from the person and presence of another, the approximate sum of \$1,946.00 in money, belonging to and in the care, custody, control, management and possession of the Constitution Bank and Trust Company, West Hartford Office, 440 New Park Avenue, West Hartford, Connecticut, the deposits of which were then insured by the Federal Deposit Insurance Corporation, in violation of Title 18, United States Code, Section 2113(a).

A TRUE BILL

Foreman

PETER C. DORSEY
United States Attorney

ALBERT S. DABROWSKI
Assistant United States Attorney

MICROFILM
JAN 21 1975

App 3

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

United States of America : DCL 121

V. : Criminal No. H-~~84-121~~ DISTRICT COURT
HARTFORD, CONN.

Horace Marble : CLERK

DEFENDANT MARBLE'S MOTION TO SUPPRESS

The defendant, Horace Marble, pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure, 18 USC Sec. 3501, and the Fifth Amendment, moves to suppress any and all statements, confessions, and/or admissions obtained from the defendant for use in this prosecution on the grounds that such evidence was procured in violation of the defendant's constitutional and statutory rights.

Wherefore the defendant moves for an evidentiary hearing out of the presence of the jury to establish the factual basis of this motion.

Tanya 14 Dec 1975
"The defendant Marble's
motion to suppress is denied
for the reasons set forth
in the accompanying findings of facts;
for ordered
Gregory B. Craig
1975

THE DEFENDANT
HORACE MARBLE

BY *Gregory B. Craig*
Gregory B. Craig
Federal Public Defender
450 Main Street
Hartford, Connecticut

CERTIFICATE OF SERVICE

United States District Court
District of Connecticut
FILED AT HARTFORD
12/23/74 Clerk
Sylvia J. Dabrowski
by: *Gregory B. Craig*

I hereby certify that a copy of the above motion was delivered this 23rd day of December, 1974 to Albert Dabrowski, Esq.
Assistant United States Attorney, Hartford, Connecticut.

BY *Gregory B. Craig*

UNITED STATES DISTRICT COURT JAN 10 3 31 PM '75

DISTRICT OF CONNECTICUT

CLERK

UNITED STATES OF AMERICA

v.

CRIMINAL NO. H-74-172

HORACE MARBLE

DEFENDANT MARBLE'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

Proposed Findings of Fact

1. On October 23, 1974 at approximately 1:30 p.m. on West 112th Street between Seventh and Eighth Avenues in the central Harlem section of New York City, Horace Marble and his wife, Diane, were taken into custody by Special Agents Mortenson, Ahlerich, and Cronin of the Federal Bureau of Investigation.
2. On or around noon, October 23, 1974, Horace Marble took approximately 90 milligrams of Methadone.
3. A few minutes before Horace Marble and his wife were taken into custody on October 23, 1974, Diane Marble took approximately 50 milligrams of Methadone.
4. From the time of the arrest until the time of Diane Marble's release, both Horace Marble and his wife were under the influence of Methadone.
5. On October 23, 1974, Horace Marble and his wife met by accident at West 110th Street and Lennox Avenue. Marble accompanied his wife to the Methadone Center where Mrs. Marble took her dose of Methadone. They left together and walked west on West 112th Street. They crossed Seventh Avenue and were walking towards Eighth Avenue on West 112th when they were arrested.
6. The law enforcement agents first spotted the Marbles at West 110th Street and followed them until the time of their arrest.
7. At the time of the Marbles arrest, they were accompanied by a third individual, a black male whose name was Bailey.

8. At the time of the arrest, at least five law enforcement officers and two police cars were on the scene. None of the officers wore uniforms; none of the cars were marked.

9. All three Special Agents for the FBI had their guns drawn and aimed at Horace Marble at the time of the arrest.

10. A fourth law enforcement officer -- a detective for the New York City Police Department -- had a rifle or a shotgun aimed at Horace Marble.

11. At the earliest stages of his arrest, Horace Marble did not know whether the men with the guns were "gangsters" or law enforcement officers as a result of his testimony for the government in the Manfredi case.

12. At the time of his arrest, Horace Marble was in fear of losing his life.

13. At the time of his arrest, Horace Marble was searched by two special agents of the FBI -- agents Mortenson and Cronin -- who, with their guns still drawn, "patted down" Marble in search of a weapon.

14. Horace Marble was unarmed; Diane Marble was unarmed.

15. Horace Marble did not resist arrest in any way; Diane Marble did not resist arrest in any way.

16. At the time of his arrest, none of the arresting officers had a warrant for Horace Marble's arrest.

17. At the time of his arrest, none of the arresting officers had ever seen a warrant for Horace Marble's arrest.

18. At no time in the course of the hearing on defendant's motion to suppress evidence, was a warrant for Horace Marble's arrest introduced into evidence.

19. Both Horace Marble and His Wife Diane were handcuffed with their hands behind their backs and placed in the rear seat of one of the unmarked police cars.

20. Although Diane, Marble was not physically searched at the time of her arrest, one of the agents took her handbag from her and examined the contents. app. 6

21. Although one of the agents identified himself to Diane Marble as a Special Agent of the FBI and showed her identification, a card contained in his wallet, at no time did any agent identify himself in similar fashion to Horace Marble.

22. Although the third individual who was with the Marbles at the time of the arrest cursed the agents, yelled loudly and drew a crowd, he was neither questioned, searched nor taken into custody.

23. At the time she was taken into custody, none of the arresting officers had a warrant for Diane Marble's arrest.

24. At the time she was taken into custody, none of the arresting officers had ever seen a warrant for Diane Marble's arrest.

25. In the automobile, the Marbles were seated in the back seat with Special Agent Ahlerich; Diane Marble was seated behind the driver, Horace Marble was seated in the middle, and Special Agent Ahlerich was seated on the right hand side.

26. Horace Marble complained that his handcuffs were too tight.

27. Agent Ahlerich told Horace Marble to stop worrying about his hands and to start worrying about what could happen to his wife.

28. During the ride in the automobile, one of the agents told Horace Marble that if he would cooperate his wife would be released.

29. During the ride, Horace Marble asked why his wife had been arrested and was told that she had been detained on suspicion of "aiding and abetting."

30. During the ride, Diane Marble asked if the agents had a warrant for her arrest and was informed that there was a warrant for her husband's arrest but that the agents had also been told to arrest her if she was found in the company of her husband.

31. During the ride, Special Agent Mortenson told Marble that they wanted to ask him questions about a bank robbery in Connecticut.

32. The Marbles were driven by car to the headquarters of the Federal Bureau of Investigation in Manhattan in New York City.

33. The car ride from the scene of the arrest to the FBI headquarters took approximately twenty minutes.

34. At the time the car with the Marbles arrived at the FBI headquarters, Diane Marble's true identity was known to the agents. She was not released, however.

35. The Marbles were taken to the Criminal Division of the FBI at which point they were separated: Agents Mortenson and Ahlerich took Horace Marble to an interrogation room and Agent Cronin took Diane Marble to another room on the same floor where she was placed in the custody of a female agent.

36. A "strip search" was conducted of Horace Marble by the agents, and Marble was forced to strip naked; his body then was examined.

37. The strip search was conducted in the presence of Diane Marble.

38. In the interrogation room, Special Agent Mortenson then asked if Marble would cooperate. Marble responded: "My name is Horace Marble and I don't want to give any statements until I have a lawyer with me."

39. At 1:55 p.m. Horace Marble was provided with Government's Exhibit I and told to sign it.

40. Marble looked at the form and signed it.

41. At the time Marble signed Government's Exhibit I, he did not understand its meaning and believed it was part of the FBI's standard procedure for processing individuals who had been arrested.

42. Other forms relating to fingerprints, background information, and receipts for personal belongings were being filled out and signed at the same time Marble signed Government's Exhibit I.

43. At no time on October 23, 1974, did the agents inquire as to whether Marble was under the influence of any drug or narcotic or other kind of medication.

44. Agent Mortenson left the interrogation room to make arrangements for fingerprinting and photographing. Agent Ahlerich continued to interrogate Horace Marble and Marble informed Agent Ahlerich that he had taken Methadone earlier that day.

45. During Agent Mortenson's absence, Agent Ahlerich told Marble that if he did not cooperate his wife would be arrested, a bond would be set and she would be put in jail. Agent Ahlerich said that the Government might not make the charges "stick" but it would be extremely unpleasant for Marble's wife. Ahlerich urged Marble to "be a man" and spare his wife any unnecessary hardship by cooperating.

47. No urine sample was ever taken from Horace Marble to check for the presence of narcotics even though it was known to Special Agents Mortenson and Ahlerich that Marble had an extensive history of association with narcotics.

48. Although Horace Marble announced his refusal to give a statement in the absence of an attorney, and although Agent Ahlerich was aware that Marble was under medication and under the influence of a narcotic-type drug, the interrogation continued.

49. With the exception of the last two lines on page two and the top three lines of page three, Horace Marble's statement is in Special Agent Ahlerich's handwriting. (See Government's Exhibit II).

50. That portion of Horace Marble's statement which is in Marble's own handwriting was dictated to him by a Special Agent of the FBI. (See Government's Exhibit II).

51. After Marble had given the statement to the agents, he was permitted to meet in private with his wife at which point he told her that he had confessed so that she would not be arrested and put in jail.

52. Not until after Horace Marble had given his statement was he informed that his wife would be released.

53. Horace Marble gave a statement to the FBI because, at least two occasions, Special Agents told him that his wife would not be released unless he cooperated and Marble was afraid that his wife would be put in jail if he did not provide a statement.

54. At the time Horace Marble gave a statement to the FBI, he was under the influence of an extremely heavy dose of Methadone, and his judgment was therefore seriously impaired.

55. The special Agents for the FBI continued to interrogate Marble even though he had refused to give a statement to them without an attorney present.

56. Horace Marble was not taken before a federal magistrate nor was he arraigned on the charge of bank robbery until December 9, 1974, one month and sixteen days after his interrogation in New York City. Nor was counsel appointed to represent Mr. Marble in this matter until December 9, 1974, one month and sixteen days after Mr. Marble's arrest on October 23, 1974.

Conclusions of Law

1. Horace Marble's arrest was warrantless, and there was no probable cause to believe that Marble had committed a crime. Moreover, the arrest exceeded the authority of the FBI as set forth in 18 U.S.C. 3052 in that the Special Agents did not have reasonable grounds to believe that Marble had committed or was committing a felony. Wong Sun v. U.S., 371 U.S. 471, 479-484 (1962)

2. At the time Horace Marble signed Government's Exhibits I and II, he was under the influence of a heavy dose of Methadone which seriously impaired his judgment. It was therefore impossible for him knowingly, intelligently and voluntarily to waive his constitutional rights, Johnson v. Zerbst, 304 U.S. 458, 464 (1937), and the confession cannot be deemed "the product of a rational intellect and a free will." Blackburn v. Alabama, 361 U.S. 199, 208 (1959)

3. After Horace Marble had indicated that he would not give a statement without an attorney, it was a violation of his con-

stitutional rights to ask him to sign the waiver form (Government's Exhibit I)... Miranda v. Arizona, 384 U.S. 436, 444-445, 473-474 (1965)

4. After Horace Marble told the Special Agents that he would not give a statement without an attorney present, it was a violation of his constitutional rights to continue interrogating him. Miranda v. Arizona, supra.

5. The statements made to Marble by the Special Agents of the FBI which implied that his wife would go to jail unless he co-operated unconstitutionally coerced Marble into making a confession in violation of his Fifth Amendment rights. Lynum v. Illinois, 372 U.S. 528, 534 (1962); Culombe v. Connecticut, 367 U.S. 568, 604-605 (1960); Watts v. Indiana, 338 U.S. 49, 52 (1948).

6. The Government's failure to arraign Horace Marble promptly violated the defendant's rights under the Fifth Amendment and its statutory concomitant, Rule 5(a) of the Federal Rules of Criminal Procedure as implemented in McNabb v. United States, 318 U.S. 332, and Mallory v. United States, 354 U.S. 449 (the McNabb-Mallory Rule).

Dated at Hartford, Connecticut this 10th day of January,

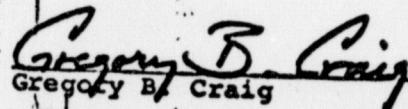
1975.

THE DEFENDANT
HORACE MARBLE

BY Gregory B. Craig
Gregory B. Craig
Federal Public Defender
450 Main Street
Hartford, Connecticut

CERTIFICATION

This is to certify that a copy of the above Proposed Findings of Fact and Conclusions of Law was delivered to Albert Dabrowski, Esq., Assistant United States Attorney, Hartford, Connecticut on the 10th day of January, 1975 at 3:30 p.m.



Gregory B. Craig

FBI-Hartford-5-14-75-Sub-624

P-092-C

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

App. 4

COPY OF ORIGINAL

Filed 1/10 1975

United States District Court,

District of Connecticut

UNITED STATES OF AMERICA

v.

Criminal No. H-74-172

HORACE MARBLE

Defendant

MEMORANDUM IN SUPPORT OF DEFENDANT MARBLE'S
MOTION TO SUPPRESS

Introduction

On January 9, 1975, this Court conducted a full evidentiary hearing on defendant Horace Marble's Motion to Suppress. At the conclusion of that hearing, the Court indicated that the factual issues raised in the course of that proceeding appeared to turn on questions of credibility, implying that on all the critical issues, the testimony of the defendant and his wife was in conflict with the testimony of the two Special Agents for the Federal Bureau of Investigation and further implying that the outcome of the defendant's Motion to Suppress hinged on whether the Court believed the testimony of the defendant and his wife, or whether the Court believed the testimony of the two Special Agents.

In certain respects, there is no doubt that the Court's observation is absolutely correct, most importantly with regard to the question of whether or not Special Agents Mortenson or Ahlerich ever told the defendant that his wife would be arrested and put in jail if he did not "cooperate."

There are, however, certain important areas of agreement in the testimony as it developed in the hearing on January 9, 1975. The purpose of this Memorandum is to point out those areas of agreement and to explore briefly the

legal implications, as they relate to the defendant's Motion to Suppress.

Statement of Facts

The defendant submits that the following facts were corroborated by the testimony of at least one -- if not both -- of the two Special Agents who testified on January 9, 1975:

(1) The Special Agents did not have nor had they ever seen warrants for the arrest of either Horace Marble or his wife, Diane Marble. At no time during the hearing on January 9, 1975 were any such warrants submitted into evidence, nor was it ever shown during that hearing that any such warrants existed.

(2) Diane Marble was handcuffed, transported under guard, questioned and searched by at least four different Special Agents for the Federal Bureau of Investigation;

- (a) There was no outstanding warrant for Diane Marble's arrest;
- (b) There was no probable cause to believe that Diane Marble had committed or was committing a crime at the time she was taken into custody;
- (c) At no time before, during or after the arrest was there any reason to believe that Diane Marble posed a threat to the physical safety of the Special Agents;
- (d) A third individual in the company of the Marbles at the time of the arrest cursed the agents, yelled and drew a crowd in the street, but the arresting officers neither arrested nor searched him whereas Diane Marble, who had shown no resistance whatsoever, was handcuffed and taken away under guard;
- (e) Diane Marble was never charged with any offense;

(5) Horace Marble was told that his wife was being released from custody only after he had already agreed to give a statement -- either while he was in the process of giving the statement (according to S.A. Ahlerich) or after he had completed giving the statement (according to the defendant).

(3) Horace Marble had taken 90 milligrams of Methadone at noon on the day of his arrest, approximately one and a half hours before his arrest and approximately two hours before he gave his statement to the Special Agents. There can be no question that Marble was under the influence of that drug at the time of his arrest, at the time of his interrogation, at the time he signed the first waiver form at 1:55 p.m., and at the time he gave his statement and signed it, allegedly at 2:14 p.m. Special Agent Ahlerich knew of this fact before the defendant had agreed to give a statement and yet he continued to interrogate the defendant.

(4) Right after the Special Agents and the Marbles arrived at the FBI headquarters, Special Agent Mortenson asked Horace Marble if Marble would like to give a statement. Marble refused and said he would not give a statement without an attorney present.

Argument

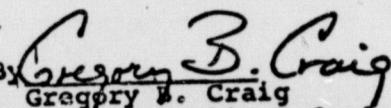
The defendant submits that the above-catalogued facts which are, for the most part, uncontested should persuade this Court, for the reasons set forth in the defendant's "Proposed Conclusions of Law" to grant the defendant's Motion to Suppress.

The defendant intends, at the earliest possible moment, to submit a more complete memorandum of law setting forth the reasons why the defendant's Motion to Suppress should be granted.

THE DEFENDANT
HORACE MARBLE

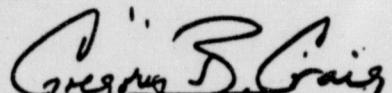
Agent Ahlerich's testimony differs with the testimony of both Agent Mortenson and the defendant on this point. Ahlerich agrees that Marble refused to give a statement, but he does not recall that Marble mentioned that he wanted an attorney present.

THE DEFENDANT
HORACE MARBLE

By 
Gregory B. Craig
Federal Public Defender
450 Main Street
Hartford, Connecticut

Certification

This is to certify that a copy of the above Memorandum was delivered to Albert Dabrowski, Assistant United States Attorney, Hartford, Connecticut on the 10th day of January, 1975 at 5:00 p.m.


Gregory B. Craig

11pp. 6

Received 5:00 pm
GBC

COPY OF ORIGINAL

Filed 1/10

1975

United States District Court

UNITED STATES DISTRICT COURT District of Connecticut

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. H-74-172

HORACE MARBLE :

GOVERNMENT'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

On November 15, 1974 the defendant, HORACE MARBLE, was indicted by a Federal Grand Jury sitting in Hartford Connecticut for violating Title 18, United States Code, Section 2113(a) (bank robbery) in connection with the April 19, 1974 armed robbery of the Constitution Bank & Trust Company, West Hartford office, 440 New Park Avenue, West Hartford, Connecticut. On October 23, 1974, while the defendant was in custody after being arrested for a parole violation, he made oral and written admissions related to his involvement in that bank robbery. The defendant has moved to suppress that evidence on the grounds that the statement and his admissions were procured in violation of his constitutional and statutory rights. The government submits that the defendant's motion to dismiss should be denied.

I.

Government's Proposed Findings of Fact

1. On or before October 23, 1974, Federal Bureau of Investigation (FBI) Special Agent Jerry Mortensen of the FBI's New York City Office had received information (by teletype) from the FBI New Haven, Connecticut, office that a parole violator's warrant had been issued for the arrest of the defendant, HORACE MARBLE.

2. Agent Mortensen had been advised by a Special Agent with the New York office of the Drug Enforcement Administration that Mr. Marble almost always carried a gun.

3. At 1:30 p.m. on October 23, 1974, FBI Agents Matthew Cronin, Milton Ahlerich and Jerry Mortensen, in the vicinity of 112th and 8th Street, Harlem, New York, observed the defendant, HORACE MARBLE.

4. With the defendant at that time were Diane Marble (his wife) and another male named George Bailey.

5. Agents Mortensen, Cronin and Ahlerich approached the defendant at which time Agent Mortensen displayed his credentials, orally advised the defendant that they were FBI agents, told Mr. Marble he was under arrest and told him to put his hands up against a nearby wall.

6. Agent Mortensen and at least one of the other agents had their weapons drawn and in plain view.

7. Agent Cronin began a "pat down" search of Mr. Marble and he was advised he was being placed under arrest for a parole violation.

8. Agent Mortensen or Agent Ahlerich asked Diane Marble for identification and she refused to identify herself.

9. George Bailey identified himself to the agents and then began yelling obscenities at the agents and shouting that the agents had no right to arrest the defendant.

10. The activity related to the arrest and the yelling and shouting of George Bailey attracted a large crowd of people.

11. Upon seeing the large crowd which was gathering, the agents feared for their safety and decided to leave the area immediately.

12. Mr. Marble's hands were handcuffed behind his back and he was placed in the rear seat of a full size Ford or Chevrolet.

13. Mrs. Marble, who had still not identified herself, was also placed in the rear seat with her hands handcuffed in front of her.

14. No body search was conducted of Mrs. Marble at any time prior to her later arrival at the New York FBI office.

15. At or about the time Mrs. Marble was handcuffed her pocketbook was taken by one of the agents. She was handcuffed because the agents were concerned that she might be armed and they had not conducted a body search. The pocketbook was removed from her control because the agents were concerned that it might contain a weapon.

16. Agent Ahlerich got in the rear seat with Mr. and Mrs. Marble. Agents Cronin and Mortensen got in the front with Agent Cronin driving.

17. The vehicle departed the area approximately two-three minutes after the agents initially approached the defendant in No. 5 above.

18. In the car Agent Mortensen again displayed his credentials, stated that they were FBI agents, and told Mr. Marble he was under arrest for a parole violation. Agent Mortensen advised the defendant of his Constitutional Rights by reading from a standard advice of rights form.

19. Mrs. Marble was told that she was being taken to the FBI office to ascertain her identity.

20. Mrs. Marble then identified herself as Diane Marble, HORACE MARBLE's wife.

21. At no time was Mrs. Marble told she was under arrest for any charge including "aiding and abetting" or "harboring."

22. Mr. Marble told agent Mortensen that his handcuffs were too tight.

23. Agent Mortensen told Mr. Marble to lean forward. Agent Mortensen then examined the handcuffs and observed light passing between Mr. Marble's wrists and the handcuffs. Agent Mortensen concluded that the handcuffs were not too tight.

24. At no time did any agent state to Mr. Marble that "you should worry more about your wife than the handcuffs" or words of that nature.

25. At no time did any agent state to Mr. Marble that "if you hassle us we will hassle your wife" or words of that nature.

26. The car arrived at the New York office of the FBI, 201 East 69th Street at 1:50 p.m.

27. The three agents and Mr. and Mrs. Marble entered the building and travelled by elevator to the FBI's criminal division.

28. Agents Ahlerich and Mortensen took the defendant to an interview room where a "strip search" was conducted.

29. Agent Cronin took Mrs. Marble to a different area within the criminal division and turned her over to a female who conducted a "strip search."

30. At approximately 1:55 p.m. Agent Mortensen again told Mr. Marble that he had been arrested on a parole violator's warrant and that the FBI was also interested in questioning him concerning a bank robbery in Connecticut.

31. At 1:55 p.m., immediately following his strip search, Mr. Marble was advised of his Constitutional Rights by Agent Mortensen who read from a Standard "Interrogation: Advice of Rights" form (Government Exhibit 1).

32. Mr. Marble then read the Advice of Rights form and signed it at 1:57 p.m. (Government Exhibit 1).

33. After reading and signing the Advice of Rights form Mr. Marble advised that he did not want to make a statement.

34. Agent Mortensen then left the interview room to make a phone call to arrange for further processing (fingerprinting and photographing).

35. Agent Ahlerich asked Mr. Marble general questions concerning his background, including but not limited to, his full name, marital status, address and drug habits. Mr. Marble told agent Ahlerich that he was on a Methadone treatment program and had received Methadone earlier that day.

36. Mr. Marble had received 90 mg. of Methadone at a New York treatment facility at 12:00 noon that same day.

37. While providing this background information Mr. Marble told agent Ahlerich that he had changed his mind and wished to make a statement about the bank robbery.

38. Agent Mortensen re-entered the interview room shortly before 2:13 p.m. and was advised by Agent Ahlerich that Mr. Marble had changed his mind and now wanted to make a statement.

39. At 2:13 p.m. Mr. Marble was given another Advice of Rights Form (Government Exhibit 2).

40. Mr. Marble read the form and signed it at 2:14 p.m.

41. Mr. Marble was given this second advice of rights form for the following two reasons:

a.) Agent Ahlerich wanted to resolve any future question concerning Mr. Marble's knowledge of his rights in view of the fact that after reading the first form, Mr. Marble indicated he did not want to make a statement.

b.) Agent Mortensen thought that FBI general procedure called for a second Advice of Rights form in a situation of this nature.

42. Mr. Marble, after reading and signing the second Advice of Rights form, orally related to Agents Ahlerich and Agent Mortensen certain facts concerning his involvement in the April 19, 1974 robbery of a West Hartford, Connecticut, bank.

43. Mr. Marble's oral admissions were reduced to a written statement (Government Exhibit 2).

44. Mr. Marble read the statement and made several corrections initialling "H.M." where those corrections were made.

45. Mr. Marble wrote in the statement, "I Horace Marble have read the above statement and it is true and complete to the best of my knowledge. I now sign this statement because it is true and correct." Mr. Marble then signed it.

46. While Mr. Marble was relating the details of his involvement in the bank robbery to Agents Mortensen and Ahlerich, Agent Cronin and the female who had conducted the body search of Mrs. Marble came to the door of the interview room and advised Agents Mortensen and Ahlerich that approximately \$200 was found in Mrs. Marble's underwear and that no weapon was found.

47. Agent Ahlerich advised agent Cronin and the female that Mrs. Marble should be released.

48. While making the statement Mr. Marble asked the agents when and if he could see his wife. He was told he would be able to see her before she left.

49. After being advised that she was free to go home, Marble voluntarily remained at the FBI office to learn what would happen to her husband.

50. At no time did any agent tell or promise Mr. Marble that if he co-operated and gave a statement his wife would be released.

51. At no time did any agent tell Mr. Marble that if he did not co-operate and provide a statement his/would be arrested.

52. No promises or threats of any nature were made to Mr. Marble.

53. The statement (Government Exhibit 2) given to the agents by Mr. Marble was free and voluntary and was made with knowledge and understanding of his Constitutional Rights.

54. No pressure or coercion of any kind was utilized by anyone to influence the making of this statement.

55. Both Agents Ahlerich and Mortensen are familiar with the symptoms and characteristics of narcotic addiction and withdrawal.

56. At no time did Mr. Marble appear to the agents to be suffering from the symptoms or characteristics associated with withdrawal from narcotic addiction or from any adverse effects normally associated with drug addiction.

57. Mr. Marble's physical and mental condition appeared to the agents as normal prior to and while making the statement concerning the bank robbery.

58. The defendant is a convicted felon, having been previously convicted of possession of narcotic drugs with intent to sell and having been sentenced to a five year prison term (Two years plus a three year Special Parole Period).

Points and Authorities

The government submits that there is no credible evidence that Mr. Marble's statement was not voluntarily given. Whether a confession is voluntary is a question of fact to be determined from the "totality of all the surrounding circumstances." Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). In Schneckloth v. Bustamonte, the Court pointed out a number of factors that have been considered in other cases including, but not limited to, the lack of advice concerning constitutional rights, the length of detention, the repeated and prolonged nature of the questioning and the use of physical punishment, but added that no case turned "on the presence or absence of a single controlling criterion." (Id.)

Mr. Marble was arrested for a parole violation at 1:30 p.m. He confessed to the bank robbery less than forty-five (45) minutes later at 2:14 p.m. During that forty-five (45) minutes he was advised of his Constitutional Rights on three separate occasions. (Once oral, twice written.) The defendant demonstrated that he was aware of his rights by initially stating that he did not desire to make any statements. When he changed his own mind the Agents advised him of his rights again. The government submits that the agents' actions in this case are a model of intelligent and responsible procedure.

In the absence of the defendant's own testimony concerning the agents' alleged statements concerning his wife, there is no evidence that any promises or threats were made. There is no evidence of pressure or coercion or that unwarranted physical force was used. The government submits, and asks this Court to find as a fact, that in view of all of the testimony at the hearing, the defendant's testimony concerning threats or promises made by the agents with regard to his wife was simply not credible.

Conclusion

In view of the brief period of detention prior to the confession (44 minutes), the absence of any credible evidence concerning alleged threats, promises, pressure or coercion, the absence of a prolonged period of questioning, and in light of the intelligent and responsible procedures followed by the agents, the government respectfully submits that the defendant's Motion to Suppress should be denied.

Dated at Hartford, Connecticut, this 10th day of January, 1975.

UNITED STATES OF AMERICA

PETER C. DORSEY
United States Attorney

By

Albert S. Dabrowski
ALBERT S. DABROWSKI
Assistant U. S. Attorney

C E R T I F I C A T I O N

This is to certify that a copy of the foregoing Government's Memorandum was hand delivered to the office of Gregory B. Craig, Federal Public Defender, 450 Main Street, Hartford, Connecticut, this 10th day of January, 1975.

Albert S. Dabrowski
ALBERT S. DABROWSKI
Assistant U. S. Attorney

FILED

JAN 11 2 34 PM '75

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

-vs-

: Criminal No. H 74-172

HORACE MARBLE :

RULING ON DEFENDANT'S
MOTION TO SUPPRESS

The motion of the defendant Horace Marble to suppress any and all statements, confessions, and/or admissions, is denied.

Findings of Fact

- ✓ ① On or before October 23, 1974, Special Agent Jerry Mortensen of the New York City Office of the Federal Bureau of Investigation (FBI) had received information (by teletype) from the FBI office in New Haven, Connecticut, that a parole violator's warrant had been issued for the arrest of the defendant Horace Marble.
- ✓ 2. Agent Mortensen had been advised by a Special Agent with the New York office of the Drug Enforcement Administration that Mr. Marble almost always carried a gun.
- ✓ 3. At 1:30 p.m. on October 23, 1974, FBI Agents Matthew Cronin, Milton Ahlerich and Jerry Mortensen, in the vicinity of 112th and 8th Street, Harlem, New York, observed the defendant.

✓ 4. With the defendant at that time were Diane Marble, (his wife,) and another male named George Bailey.

✓ 5. Agents Mortensen, Cronin and Ahlerich approached the defendant at which time Agent Mortensen displayed his credentials, orally advised the defendant that they were FBI agents, told Mr. Marble he was under arrest and told him to put his hands up against a nearby wall.

✓ 6. Agent Mortensen and at least one of the other agents had their weapons drawn and in plain view.

✓ 7. Agent Cronin began a "pat down" search of Mr. Marble and he was advised that he was being placed under arrest for a parole violation.

✓ 8. Agent Mortensen or Agent Ahlerich asked Diane Marble for identification and she refused to identify herself.

✓ 9. George Bailey identified himself to the agents and then began yelling obscenities at the agents and shouting that the agents had no right to arrest the defendant.

✓ 10. The activity related to the arrest and the yelling and shouting of George Bailey attracted a large crowd of people.

✓ 11. Upon seeing the large crowd which was gathering, the agents feared for their safety and decided to leave the area immediately.

✓ 12. Mr. Marble's hands were handcuffed behind his back and he was placed in the rear seat of a full size Ford or, Chevrolet.

✓ 13. Mrs. Marble, who still had not identified herself, was also placed in the rear seat with her hands handcuffed in front of her.

✓ 14. No body search was conducted of Mrs. Marble at any time prior to her later arrival at the New York FBI office.

✓ 15. At or about the time Mrs. Marble was handcuffed, her pocket book was taken by one of the agents. She was handcuffed because the agents were concerned that she might be armed and they had not conducted a body search. The pocket-book was removed from her control because the agents were concerned that it might contain a weapon.

✓ 16. Agent Ahlerich got in the rear seat with Mr. and Mrs. Marble. Agents Cronin and Mortensen got in the front with Agent Cronin driving.

✓ 17. The vehicle departed the area approximately two - three minutes after the agents initially approached the defendant.

✓ 18. In the car, Agent Mortensen again displayed his credentials, stated that they were FBI agents, and told Mr. Marble that he was under arrest for a parole violation. Agent Mortensen advised the defendant of his constitutional rights by reading from a standard advice of rights form.

✓ 19. Mrs. Marble was told that she was being taken to the FBI office to ascertain her identity.

✓ 20. Mrs. Marble then identified herself as Diane Marble, Horace Marble's wife.

✓ 21. At no time was Mrs. Marble told that she was under arrest for any charge including "aiding and abetting" or "harboring."

✓ 22. Mr. Marble told Agent Mortensen that his handcuffs were too tight.

✓ 23. Agent Mortensen told Mr. Marble to lean forward. Agent Mortensen then examined the handcuffs and observed light passing between Mr. Marble's wrists and the handcuffs. Agent Mortensen concluded that the handcuffs were not too tight.

✓ 24. At no time did any agent state to Mr. Marble that "you should worry more about your wife than the handcuffs" or words of that nature.

✓ 25. At no time did any agent state to Mr. Marble that "if you hassle us we will hassle your wife" or words of that nature.

✓ 26. The car arrived at the New York office of the FBI, 201 East 69th Street at 1:50 p.m.

✓ 27. The three agents and Mr. and Mrs. Marble entered the building and travelled by elevator to the FBI's criminal division.

✓ 28. Agents Ahlerich and Mortensen took the defendant to an interview room where a "strip search" was conducted.

✓ 29. Agent Ohlrich moved Mr. Marble to a different area within the criminal division and turned her over to a female who conducted a "strip search."

✓ 30. At approximately 1:55 p.m., Agent Mortensen again told Mr. Marble that he had been arrested on a parole violator's warrant and that the FBI was also interested in questioning him concerning a bank robbery in Connecticut.

✓ 31. At 1:55 p.m., immediately following his strip search, Mr. Marble was advised of his constitutional rights by Agent Mortensen who read from a Standard "Interrogation: Advice of Rights" form (Government Exhibit 1).

✓ 32. Mr. Marble then read the Advice of Rights form and signed it at 1:57 p.m. (Government Exhibit 1).

✓ 33. After reading and signing the Advice of Rights form, Mr. Marble advised that he did not want to make a statement until he had a lawyer present with him.

✓ 34. Agent Mortensen then left the interview room to make a phone call to arrange for further processing (fingerprinting and photographing).

✓ 35. Agent Ahlerich asked Mr. Marble general questions concerning his background, including but not limited to, his full name, marital status, address and drug habits. Mr. Marble told Agent Ahlerich that he was on a Methadone treatment program and had received Methadone earlier that day.

✓ 36. Mr. Marble had received 90 mg. of Methadone at a New York treatment facility at 12:00 noon that same day.

✓ 37. While providing this background information, Mr. Marble told Agent Ahlerich that he had changed his mind and wished to make a statement about the bank robbery.

✓ 38. Agent Mortensen re-entered the interview room shortly before 2:13 p.m. and was advised by Agent Ahlerich that Mr. Marble had changed his mind and now wanted to make a statement.

✓ 39. At 2:13 p.m., Mr. Marble was given another Advice of Rights form. (Government Exhibit 2).

✓ 40. Mr. Marble read the form and signed it at 2:14 p.m.

✓ 41. Mr. Marble was given this second Advice of Rights form for the following reason: Agent Ahlerich wanted to resolve any future question concerning Mr. Marble's knowledge of his rights in view of the fact that after reading the first form, Mr. Marble indicated that he did not want to make a statement without the presence of his lawyer.

✓ 42. Mr. Marble, after reading and signing the second Advice of Rights form, orally related to Agents Ahlerich and Agent Mortensen certain facts concerning his involvement in the April 19, 1974 robbery of a West Hartford, Connecticut, bank.

✓ 43. Mr. Marble's oral admissions were reduced to a written statement. (Government Exhibit 2).

✓ 44. Mr. Marble read the statement and made several corrections initialling "H.M." where those corrections were made.

✓ 45. Mr. Marble wrote in the statement, "I Horace Marble have read the above statement and it is true and complete to the best of my knowledge. I now sign this statement because it is true and correct." Mr. Marble then signed it.

✓ 46. While Mr. Marble was relating the details of his involvement in the bank robbery to Agents Mortensen and Ahlerich, Agent Cronin and the female who had conducted the body search of Mrs. Marble came to the door of the interview room and advised Agents Mortensen and Ahlerich that approximately \$200 was found in Mrs. Marble's underwear and that no weapon was found.

✓ 47. Agent Ahlerich advised Agent Cronin and the female that Mrs. Marble should be released.

✓ 48. While making the statement, Mr. Marble asked the agents when and if he could see his wife. He was told he would be able to see her before she left.

✓ 49. After being advised that she was free to go, Mrs. Marble voluntarily remained at the FBI office to learn what would happen to her husband.

✓ 50. At no time did any agent tell or promise Mr. Marble that if he cooperated and gave a statement his wife would be released.

✓ 51. At no time did any agent tell Mr. Marble that if he did not cooperate and provide a statement his wife would be arrested.

✓ 52. No promises or threats of any nature were made to Mr. Marble.

✓ 53. The statement (Government Exhibit 2) given to the agents by Mr. Marble was free and voluntary and was made with full knowledge and understanding of his constitutional rights.

54. No unlawful pressure or coercion was utilized by anyone to influence the making of this statement.

✓ 55. Both Agents Ahlerich and Mortensen are familiar with the symptoms and characteristics of narcotic addiction and withdrawal.

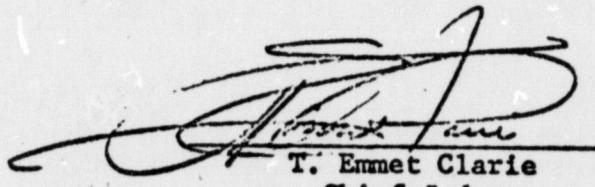
✓ 56. At no time did Mr. Marble appear to the agents to be suffering from the symptoms or characteristics associated with withdrawal from narcotic addiction or from any adverse effects normally associated with drug addiction.

✓ 57. Mr. Marble's physical and mental condition appeared to the agents as normal prior to and while making the statement concerning the bank robbery.

✓ 58. The defendant is a convicted felon, having been previously convicted of possession of narcotic drugs with intent to sell and having been sentenced to a two-year prison term, with a three year special parole period to follow.

The Court finds that the confession of bank robbery was voluntarily and intelligently given, without any threat, promise, or coercion, and the motion to suppress is denied. SO ORDERED.

Dated at Hartford, Connecticut, this 14th day of January, 1975.



T. Emmet Clarke
Chief Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

HORACE MARBLE

CRIMINAL NO. H-74-172

DEFENDANT MARBLE'S MOTION FOR A CONTINUANCE

The defendant, Horace Marble, pursuant to Rules 12(b)(1) and Rule 45(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution moves this Court to postpone the trial in the above-captioned case until such time as the transcripts of certain testimony developed during the evidentiary hearing of January 9, 1975 are available for defendant's use during the trial. It is anticipated that the continuance would not exceed thirty days.

The reasons why this motion should be granted are set forth below.

Statement of Facts

On December 9, 1974, the defendant was presented before this Court and charged with robbing the Constitution Bank and Trust Company of West Hartford, Connecticut in violation of 18 U.S.C. 2113(a). On that same date, the Office of the Federal Public Defender in Hartford, Connecticut was appointed to represent the defendant.

Fourteen days later, on December 23, 1974, the defendant filed a motion to suppress any and all statements, confessions and/or admissions obtained from the defendant for use in this prosecution on the grounds that such evidence was procured in violation of the defendant's constitutional and statutory rights. The defendant requested an evidentiary hearing out of the presence of the jury to establish the factual basis for that motion.

On Tuesday, January 7, 1975, a jury was selected in this case, and the Court announced that the trial would be tentatively scheduled for Tuesday, January 28, 1975, some three weeks later.

On Thursday, January 9, 1975, a full evidentiary hearing of approximately four hours' duration was conducted in which testimony was developed relating to the defendant's motion to suppress. At the conclusion of that hearing, the Court granted the defendant and the government twenty-four hours to file proposed findings of fact and conclusions of law. The following day, on Friday, January 10, 1975, each side filed its proposed findings of fact and conclusions of law; the defendant also filed a brief memorandum in support of the motion to suppress.

On Tuesday, January 14, 1975, the Court denied the defendant's motion to suppress.

At the earliest possible moment thereafter, the defendant's attorney approached the government as to possible plea negotiations. On Wednesday, January 22, 1975, defense counsel relayed the results of those negotiations to the defendant who has been incarcerated at the Federal Correctional Institution in Danbury, Connecticut, at which point the defendant indicated his desire to proceed to trial. This decision was conveyed to the government on the following day, Thursday, January 23, 1975.

That same day, January 23, 1975, defense counsel met with Court Reporter, Elliot Sperber, and requested transcripts of the suppression hearing at the earliest possible time for use at the upcoming trial. Mr. Sperber informed counsel for the defense that, due to the press of other urgent court business, the transcripts could not be completed for a period of thirty days.

Neither the government nor the defense has requested any continuance in this case prior to the filing of this motion. Indeed, this case has proceeded rapidly and expeditiously toward trial.

The defendant respectfully submits that his right to a fair trial as guaranteed by the Sixth Amendment to the Constitution would be seriously compromised if he were not permitted to confront and cross-examine his accusers equipped with transcripts of their earlier testimony in this case. For this reason, the defendant requests that the trial in this case be delayed until such time as those transcripts are available for the defendant's use during trial.

Argument

The question of a continuance has traditionally been held to be addressed to the discretion of the trial judge, and the defendant recognizes that generally speaking, continuances are not favored and are not granted except where the refusal to grant a continuance will work prejudice to the substantive rights of the accused. See Chandler v. Fretag, 348 U.S. 3, 10 (1954). Such is the case, however, as the defendant approaches his trial on January 28, 1975.

In the past, the courts have refrained from enumerating specific grounds meriting the granting of a continuance, believing instead that the trial court should consider each request on its individual merits and in light of the facts and circumstances relating to the case at hand. There is, in short, no mechanical test. See United States v. Ellenbogen, 365 F.2d. 982 (2d Cir. 1966) cert. denied 386 U.S. 923.

It has long been recognized, however, that "a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality." Unger v. Sarafite, 376 U.S. 575, 589 (1964). The court's otherwise unfettered discretion in this area should therefore not be exercised arbitrarily or capriciously or without regard for the fundamental rights of the accused.

The defendant suggests that in this case, the request for a modest postponement is eminently reasonable and the denial of that request would put his Sixth Amendment rights in serious jeopardy.

The primary evidence which the government intends to introduce against the defendant in this case is a statement given by the defendant to two Special Agents of the Federal Bureau of Investigation in which he "confesses" to having robbed the Constitution Bank and Trust Company. Although the Court has already ruled on the voluntariness of the defendant's statement -- basing its ruling on the testimony of the Special Agents at the suppression hearing of January 9th -- the defendant has the right further to cross-examine these Special Agents of the F.B.I. before the jury as to the unusual circumstances surrounding the statement. Such cross-examination will permit the jury to consider on its own whether that statement was freely, knowingly, and voluntarily given by the defendant. The credibility of the F.B.I. agents, therefore, is the central issue in this trial.

The defendant's ability to cross-examine those agents, to confront them with any inconsistent statements made during the suppression hearing, and thereby to challenge their credibility before the jury depends on defense counsel's access during the trial to the transcripts of those agents' testimony on January 9, 1975. Without access to such potentially impeaching evidence, the defendant's constitutional right to confront and cross-examine his accusers will be seriously impaired.

This specific consideration, of course, was the guiding principle behind the passage of the Jencks Act, 18 U.S.C., 3500 which requires the government to supply defense counsel with all prior statements of prosecution witnesses in the exclusive control and possession of the government.

The defendant respectfully submits that a brief stay in these proceedings will not produce an unduly burdensome hiatus. The witnesses are few and the factual issues are clearly defined. It should be further pointed out that neither counsel for the defense nor the government have been dilatory in any way in this case. Nor will the governments case be prejudiced in any way by a short period of postponement. In such circumstances, a modest delay would seem justifiable. See United States v. White, 324 F.2d 814, 815-6 (2d Cir. 1964)

The right of an accused to confront and cross-examine one's accusers in the presence of the jury is central to the free trial guarantees contained in the Sixth Amendment to the Constitution. See Chambers v. Mississippi, 93 S.Ct. 1038 (1973) In deciding this issue, the defendant urges this court to balance these important constitutional rights and the substantial risk of prejudice to the defendant. Should these rights be disregarded against the minimal cost to the orderly administration of justice.

Wherefore, the defendant respectfully urges this Court to grant this motion for a continuance.

Dated at Hartford, Connecticut this 24th day of January, 1975.

THE DEFENDANT
HORACE MARBLE

BY

Gregory B. Craig
Gregory B. Craig
Federal Public Defender
450 Main Street
Hartford, Connecticut

CERTIFICATION

This is to certify that a copy of the above motion was delivered to Albert S. Dabrowski, Esq., Assistant United States Attorney, Hartford, Connecticut.

Gregory B. Craig
app. 39 Gregory B. Craig

INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

Place N. Y. N. Y.
 Date 10/23/74
 Time 1:53 P.M.

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Horace Markel
 Witness: Jerry F. Watson, Special Agent, F.B.I. N.Y. N.Y.
 Witness: John E. Albrecht, Special Agent, F.B.I., N.Y., N.Y. 10/23/74
 Time: 1:57 p.m.

INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

Place New York, N.Y.
 Date 10/23/74
 Time 2:13 PM

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Horace Marble

Witness: Milton E. Ahlrich, S/A, FBI, N.Y.C. 10/23/74

Witness: Jerry F. Mortensen, Special Agent, FBI, N.Y. N.Y. 10/23/74

Time: 2:14 PM

H.M. I, HORACE MARBLE provide the following free and voluntary statement to Special Agents Milton E. AHLRICH and Jerry F. MORTENSEN of the Federal Bureau of Investigation. I completely understand by H.M.

H.M.

(2)

H.M

rights and I know what I am doing. I am 31 years old, I completed 8 years of school I read and write and understand the English language.

ON April 19, 1974 I robbed a bank on New Park Avenue, in west HARTFORD CONNECTICUT. The robbery occurred at about 9:30 AM and I displayed a handgun during the robbery.

The bank only had two tellers behind the counter, I displayed the gun to a white female teller about 30 years old.

When I left the bank, a white officer of the bank came out ^{H.M.} and watched me drive ~~off~~ away in my car, a 1966 green Buick with Connecticut license plates. I got about \$1,700 or possibly more in the robbery.

The reason I robbed the bank was that I was suffering from withdrawal from NARCOTICS at the time and needed money to buy NARCOTICS for my addiction.

H.M. I Doce Wistie have read the above STATEMENT AND IT IS TRUE AND CORRECT

(3) 2

To the best of my knowledge, I ~~know~~
Signed this statement because it is true and
correct. Bronx, N.Y. Oct. 23, 1974

Witnessed by

William F. Abrahil, S/A, FBI, NYC 10/23/74
Larry S. Markman, Special Agent, F.B.I., N.Y. N.Y. 10/23/74

1 J E R R Y F . M O R T E N S E N , appearing as a
2 witness, being duly sworn, testified as follows:

3 THE CLERK: Would you state your full name?

4 THE WITNESS: Jerry F. Mortensen.

5 THE CLERK: Your address, Mr. Mortensen?

6 THE WITNESS: 301 East 75th Street, New York
7 City.

8 DIRECT EXAMINATION BY MR. DABROWSKI:

9 Q Mr. Mortensen, how are you employed?

10 A I'm a Special Agent for the Federal Bureau of
11 Investigation.

12 Q How long have you been a Special Agent?

13 A Approximately six years.

14 Q On or about October 23rd of 1974, did you have
15 occasion to arrest the Defendant in this case, one Horace
16 Marble?

17 A Yes, I did.

18 Q What were the charges, will you tell us, in that
19 arrest?

20 A Mr. Marble was arrested on parole violation charges.

21 Q And this was October 23rd?

22 A That is correct.

23 Q What time did the arrest occur?

24 A Approximately 1:30 p.m.

25 Q And where did it occur?

A Approximately 112th Street and Eighth Avenue,
New York City.

MR. CRAIG: May it please the Court, may I
interrupt for just a moment?

Could I move that the witnesses be sequestered in this case, the ones in the courtroom?

MR. DABROWSKI: Your Honor, the Government has no objection to sequestering the only one other witness that the Government intends to call. And that is Mr. Ahlerich.

I would request that Mr. Miller be allowed to remain in the court. He is the case agent, and the Government does not anticipate calling him.

THE COURT: Will you make provision for our visitor here, so that he will know where to go?

MR. CRAIG: The defense has a witness, too,
your Honor.

MR. DABROWSKI: The Government would make the same request as to any defense witnesses.

MR. CRAIG: We have no objection.

THE COURT: You may make provision for her.

MR. CRAIG: Well, your Honor, we will put her in our office.

BY MR. DABROWSKI:

Mr. Mortensen, who else was present at the time

1 of the arrest?

2 A Special Agent Matt Cronin and Special Agent Milton
3 Ahlerich, also of the FBI.

4 THE COURT: Matt Cronin and who else?

5 THE WITNESS: Milt Ahlerich. Both Special
6 Agents of the Federal Bureau of Investigation.

7 THE COURT: Ahlerich?

8 THE WITNESS: Ahlerich, yes, your Honor.

9 BY MR. DABROWSKI:

10 Q Did any one particular agent place Mr. Marble
11 under arrest?

12 A Yes, I did.

13 Q Was anyone with Mr. Marble at this time?

14 A Yes, there was his wife and one other individual,
15 name unknown.

16 Q You say his wife was with him; did she identify
17 herself as his wife? How do you know it was his wife?

18 A No, not at this time. At the time of the arrest,
19 we had observed Mr. Marble with an unidentified female, for
20 approximately two blocks. And when Mr. Marble was arrested,
21 his wife at that time did not, or would not give us her
22 identity.

23 Q So you placed Mr. Marble under arrest?

24 A That is correct.

25 Q Was Mr. Marble advised of his Constitutional rights

1 at the time of his arrest?

2 A Yes, he was.

3 Q Where did that occur?

4 A That occurred in a Bureau car, on the way back to
5 the office. It was approximately two or three minutes after
6 I had identified myself, and the fact that he had been
7 under arrest.

8 It was orally given to Mr. Marble by myself, taken
9 from an interrogation advice rights form, which is the form
10 that the Federal Bureau of Investigation uses.

11 Q What transpired between the two, during the two to
12 three minutes between the time you advised him he was under
13 arrest and the time you advised him of his rights?

14 A He was advised by myself of the aforementioned
15 facts. At this time, the unidentified male individual that
16 had been with Mr. Marble began yelling rather loudly that
17 we couldn't arrest Mr. Marble.

18 We tried to calm him down, and let him know that
19 we were Federal agents, and that there was a warrant for Mr.
20 Marble's arrest.

21 Q How did you try to calm him down?

22 A Just verbally. Just verbally.

23 Q By stating that you were Federal agents?

24 A That's correct.

25 Q Did you identify yourself as Federal agents?

1 A Yes, we did. He would have no part of this, and
2 decided that he would make an issue of it.
3

4 At this time, a large crowd started gathering,
5 and due to this fact, that is when we took Mr. Marble and
6 his wife into the Bureau vehicle and left the area.
7

8 Q "He" being the individual who would have no part
9 of it -- he being the individual with Mr. Marble?
10

11 A That's correct, the unidentified individual.
12

13 Q So a large crowd gathered?
14

15 A That's correct.
16

17 Q And you took Mr. Marble, and at that time the
18 unidentified female, into your Government car?
19

20 A That's correct.
21

22 THE COURT: What happened to the man, the
23 unidentified man? You left him on the sidewalk?
24

25 THE WITNESS: Yelling, yes, your Honor.
26

27 Q What part of New York did this arrest occur in?
28

29 A This was in Harlem, about 112th Street and Eighth
30 Avenue.
31

32 Q Once he was placed in the car, did any conversations
33 transpire, before you advised him of his rights?
34

35 A No.
36

37 Q And you advised him of his rights in the vehicle
38 by reading from a standard advice of rights form?
39

40 A That is correct.
41

1 Q He was subsequently transported where?

2 A He was thereafter transferred to our office at
3 201 East 69th Street, in New York City.

4 Q What time, if you recall, what time did you arrive
5 at the New York office of the FBI?

6 A It was approximately 20 minutes later, about 1:50.

7 Q Where was Mr. Marble taken when you arrived there?

8 A He was taken to the Criminal Division, and an
9 interrogation room.

10 Q Did this unidentified female accompany him?

11 A Yes, she was also brought up to that area, and she
12 was placed in a different room. And for purposes of our own
13 protection, she was searched at this time.

14 Q And when Mr. Marble was taken to the interview, or
15 the interrogation room, who took him? Who took him there?

16 A Special Agent Ahlerich and myself.

17 Q Can you estimate what time you arrived at the
18 interview room?

19 A It would have been shortly thereafter. Five or six
20 minutes, something like this. After we arrived at the
21 office.

22 Q Who else, when you arrived at the interview room,
23 who else besides yourself and Agent Ahlerich, if anyone,
24 was there? And the Defendant Marble?

25 A No one.

1 Q What transpired when you arrived at the interview
2 room?

3 A I furnished Mr. Marble with one of our copies of
4 the interrogation of rights, advice of rights form.

5 I also went over it with him verbally, and let him
6 have it, let him read it.

7 After he read it, and possibly two or three
8 minutes thereafter, he advised that he understood his rights,
9 and he signed the form.

10 THE COURT: Did you read it to him, out loud?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: If he couldn't read, you made sure
13 he could understand it?

14 THE WITNESS: That's correct, your Honor.

15 Q And then he read it to himself, in your presence?

16 A That's correct.

17 Q Did you bring that interrogation advice of rights
18 form with you today?

19 A I did.

20 MR. DABROWSKI: Your Honor, may I have that
21 form marked as Government's Exhibit 1 for identifi-
22 cation?

23 Your Honor, I previously provided a copy of
24 this to the Defendant's counsel, Mr. Craig.

25 THE COURT: Without objection, full exhibit?

1 MR. CRAIG: No objection, your Honor.
2

3 (Government's Exhibit 1: Advice of rights
4 form.)
5

6 THE COURT: Whose second name is the witness
7 on there? Is that Ahlerich?
8

9 THE WITNESS: Yes, your Honor.
10

11 THE COURT: Is that "A-h-l-b-r-i-c-h"?
12

13 THE WITNESS: "Ahlerich, A-h-l-e-r-i-c-h."
14

15 THE COURT: It looks like a "b".
16

17 All right.
18

19 MR. DABROWSKI: Your Honor, for the purposes
20 of expediting this hearing, I would offer to the
21 Court, if it is desired, copies of the two
22 exhibits that the Government intends to introduce.
23

24 THE COURT: It is not necessary.
25

BY MR. DABROWSKI:

Q Referring to Government's Exhibit 1, a full
17 exhibit, in the upper right-hand corner of that exhibit, the
18 time appears as 1:55 p.m. And in the lower left corner,
19 the time appears as 1:57 p.m.
20

21 Could you explain the difference there? What each
22 of those times means?
23

24 A The first time, 1:55 p.m., is the time that I
25 advised, orally advised the rights to Mr. Marble.
26

27 And the 1:57 p.m. is the time that Mr. Marble gave
28

1 this back to me, after reviewing it, and stated that he had
2 read it; that he did understand it, and thereafter signed
3 it.

4 Q Prior to this time, you had read this form to him?

5 A Yes, I did.

6 Q And your signature appears as the first witness
7 on this form?

8 A That's correct.

9 Q And Mr. Marble's signature appears on the lower
10 right-hand corner of this form? That is his signature,
11 executed in your presence?

12 A That is correct.

13 Q Following Mr. Marble signing this form, what was
14 the next thing that occurred in that interview room?

15 A At this time, we were taking down some basic in-
16 formation from Mr. Marble.

17 Q What do you mean by basic information?

18 A Height, weight, full name, employment, place of
19 residence; things of this nature.

20 Q Was this orally? You asked him questions?

21 A Yes, that's correct.

22 Q And he responded?

23 A That is correct.

24 I once again advised Mr. Marble that he was under
25 arrest for parole violation charges. However, I did also

1 indicate that there was some question about a possible in-
2 volvement in a bank robbery which occurred in the Connecticut
3 area. And I asked him at this time if he wished to make
4 any statements regarding his participation in this offense.

5 At that time, Mr. Marble indicated to me that --
6 words to the effect that "We both know what happened in
7 Connecticut", however he would prefer not to make a state-
8 ment at this time.

9 Q What did you do in response to that statement?

10 A At this time, I left the room to make a phone call
11 to our photo lab, to make arrangements to have a photographer
12 come down, so we could fingerprint and photograph Mr. Marble.

13 Q And this occurred sometime after 1:57 p.m.?

14 A Yes, it did.

15 Q Would you estimate approximately how long?

16 A It was approximately 2:10, 2:15.

17 Q When you left the room, Mr. Marble and Agent
18 Ahlerich remained in the interview room?

19 A That is correct.

20 Q Did you have occasion to re-enter that interview
21 room?

22 A Yes, I did. As soon as I made the phone call,
23 which was approximately two or three minutes thereafter, I
24 went back to the room to take Mr. Marble out to get photo-
25 graphed.

1 Q And what occurred at that time?

2 A When I came back to the room, Special Agent
3 Ahlerich advised me that while he was completing the general
4 background information that Mr. Marble had indicated to him
5 that he would just as soon at this time answer the questions
6 that we had about the bank robbery, and that he would
7 furnish us with a signed statement at this time.

8 Q Did you advise him of his rights again?

9 A Yes.-- well, what I did do at this time, I asked
10 Mr. Marble if this was correct, and he advised me it was.

11 I then furnished him a second interrogation advice
12 of rights form, and told him it was exactly the same as the
13 first one.

14 I gave it to him for his observation, to ascertain,
15 by himself, that this was in fact identical to the first
16 interrogation of rights form.

17 After he looked it over, he acknowledged that, yes,
18 it was his rights, that he did recognize it to be the same
19 as the first one; that he had read it, and he then signed
20 the second one.

21 Q What was the next thing that occurred?

22 A At this time, we went over Mr. Marble's account of
23 what happened on the day of the bank robbery. And his parti-
24 cipation in this bank robbery.

25 And thereafter, we took it down, starting it on

1 the second interrogation, advice of rights form, and
2 following it through to a second page. And I believe the --

3 Q You say "we" took it down?

4 A I was conducting the oral interview and Mr.
5 Ahlerich was writing down and clearing things up as they
6 came up.

7 Q Did you bring that form with you, that statement
8 with you?

9 A Yes, I did.

10 MR. DABROWSKI: Your Honor, may that be
11 marked as Government's Exhibit 2 for identification?
12 The Government has previously provided a copy of
13 this to defense counsel.

14 THE COURT: Without objection, a full exhibit.

15 MR. CRAIG: Concerning this document, as the
16 subject of this particular hearing, I have no
17 objection to having it entered into evidence, for
18 the purposes of this hearing.

19 I don't waive any objections that I might
20 have with respect to it being a representation of
21 my client's handwriting, or whether it was procured
22 under the conditions under which it purportedly
23 was procured.

24 THE COURT: Very well. A full exhibit.

25 (Government's Exhibit 2: Waiver of rights

1 A Yes, I was.

2 Q Did you ask him, when you arrested him, whether he
3 had taken any drugs that day?

4 A Not to my recollection, no.

5 Q Did you take a urine sample from him, to determine
6 whether or not he had taken any narcotics or any kinds of
7 drugs that day?

8 A No, I did not.

9 Q When you arrested Mr. Marble on the street, did
10 you search him then?

11 A Very briefly. We searched him further when we got
12 into the office.

13 Q How many agents were with you at the time of the
14 arrest?

15 A Three.

16 Q Three in addition to you?

17 A No, two. There were three agents altogether.

18 Q And was there only one car or two cars?

19 A There was only one FBI car.

20 Q Was there another car?

21 A There was another car, yes.

22 Q Were there policemen in that car?

23 A Yes.

24 Q Did they get out of their car?

25 A Yes, they did.

1 Q Were there any guns in evidence at this time?

2 A Yes.

3 Q Did you have your gun drawn?

4 A Yes, I did.

5 Q And where was it pointing?

6 A At Mr. Marble.

7 Q Did anyone else have a gun drawn, to your recollection?

8 A I don't believe so. One of the police officers
9 may have, but they were away from the arrest scene initially,
10 and I don't recall.

11 Q Okay. When you saw Mr. Marble on the street, you
12 jumped out of the car; you pointed the gun at him, and what
13 did you say?

14 A I identified myself as FBI, advised Mr. Marble
15 that he was under arrest, not to move, and to move to the
16 wall that he was next to.

17 Q What did he do then?

18 A At that time, Mr. Marble did not move exactly as
19 I had wanted him to. The other two agents did not have
20 their guns out. Mr. Marble was trying, I guess --

21 Q What did you do then?

22 A Nothing. I just stood there with my gun on Mr.
23 Marble.

24 Q Okay. What did you see done to Mr. Marble?

1 A The two other agents that were with me took Mr.
2 Marble, who at this time had his hands on the wall, and
3 gave him a very quick pat-down, to see if there was a
4 weapon on him.

5 Q Did you say anything to Mr. Marble, other than
6 the fact that "We're FBI and you're under arrest"?

7 A I believe at this time I also, while they were
8 searching him, advised him that he was under arrest on
9 charges of parole violation.

10 THE COURT: How far away from him at that
11 time were you standing?

12 THE WITNESS: Approximately 15 feet.

13 Q And you said to him "We're the FBI; you are under
14 arrest; you are suspected of violating your parole"; is
15 that correct?

16 A Those aren't the exact words. Usually, what I
17 come out, I say "FBI; you're under arrest; put your hands
18 against the wall."

19 After things slow down, I advise him who I am,
20 and what the specific charges are.

21 Q Did you say anything to the woman?

22 A Yes.

23 Q What did you say to the woman?

24 A I told her also to keep her hands in view, so I
25 could watch her.

1 Q Did you search her?

2 A Not at that time.

3 Q Did you search anything on her?

4 A Not at that time.

5 Q Did you have a warrant on your person at that time
6 for his arrest?

7 A No, I did not.

8 Q Did you have a warrant back at the Federal Building,
9 or wherever you took him?

10 A No, I did not.

11 Q Did you ever show him a warrant?

12 A No, I did not.

13 Q Did you have a warrant?

14 A Did I personally have a warrant?

15 Q Yes.

16 A No, I personally did not.

17 Q What was the basis for the arrest?

18 A The bases of arrest were initial communications
19 received by our office from the New Haven office, advising
20 us that a warrant had been issued for his arrest on charges
21 of parole violation.

22 And I believe -- I would have to check my file --
23 but I believe a copy of this warrant was sent along.

24 Q Did you ever see a warrant on this?

25 A An official one?

1 Q Yes.

2 A No, I did not.

3 Q A warrant, an arrest warrant?

4 A No.

5 Q Did you ever take the Defendant to a Federal
6 Magistrate, after the time you arrested him?

7 A No, I did not.

8 Q Are you aware of the fact that he was ever taken
9 to a Federal Magistrate?

10 A No, I'm not.

11 Q You certainly didn't do it?

12 A No.

13 Q Now, did you tell Mr. Marble your name when you
14 got out of the car, or did you just say "FBI"?

15 A "FBI", I believe.

16 Q Did you handcuff him?

17 A Yes, I did.

18 Q You handcuffed him in front or in back?

19 A I believe it was in back. That's procedure.

20 Q Did you then put him in the car?

21 A Yes, we did.

22 Q Was it the front seat or the back seat?

23 A Back seat.

24 Q Where was he sitting in the back seat?

25 A I believe he was sitting on the passenger side,

1 back seat.

2 Q Passenger side, back seat?

3 A Yes.

4 Q Did you handcuff his wife?

5 A Yes.

6 Q Where was she sitting?

7 A I believe she was sitting next to him, in the
8 middle passenger section -- not behind the driver.

9 Q Was he handcuffed behind?

10 A I believe her handcuffs were in front, but I'm
11 not sure.

12 Q What kind of car was this?

13 A It is a -- I don't know -- it was either -- it
14 was a full-size Ford or a Chevy. One of those.

15 Q After you got in the car, did you immediately
16 start up and leave the scene of the arrest?

17 A Yes.

18 Q Incidentally, you said you followed him two
19 blocks. Where were they coming from? Do you remember that?

20 A They were coming from approximately 110th and
21 Lenox Street.

22 Q You handcuffed him in the car and you left?

23 A That's correct.

24 Q At that point, you read them their rights?

25 A Yes, I did.

1 Q Did you have a card that you were reading from?

2 A Yes, I do.

3 Q Were you sitting next to them?

4 A No, I was sitting in the front seat.

5 Q Was anybody sitting next to them?

6 A I believe one of the other agents -- of course,
7 was in the back seat -- I don't know if that was Special
8 Agent Ahlerich or Cronin.

9 Q During the arrest, did any other policemen or
10 agents say anything to Marble?

11 A The other agents may have given him instructions.

12 Q Did you hear anything being said to Mr. Marble?

13 A Not to my recollection, no.

14 Q What about the police officers?

15 A No, not to my recollection, no.

16 Q How many police officers were there?

17 A Two.

18 Q So in total, there were five agents -- law enforcement
19 agents; three of you from the FBI, plus two city
20 policemen?

21 A Yes, that is correct.

22 Q Now, did they have a police cruiser?

23 A No.

24 Q They had a plain car?

25 A Yes.

1 Q Did they have guns drawn?

2 A I don't recall. As I said, one may have, but
3 they were at the end of the block, and they weren't right
4 in the immediate arrest situation.

5 THE COURT: Were they in uniform?

6 THE WITNESS: No, your Honor, they were not.
7 They were detectives.

8 Q Did they at anytime, identify themselves to the
9 Defendant or his wife?

10 A I don't believe so.

11 Q Now, in the car, was anything else done? Did you
12 or the other agents say anything to either Horace Marble
13 or his wife?

14 A I believe there was a question -- Mr. Marble would
15 not identify himself to us at that time, as such.

16 Q Did anyone ask Mr. Marble for his co-operation
17 at that time, in the car?

18 A Oh, well, we asked him if he was in fact Horace
19 Marble.

20 Q Did you ask him if he would co-operate?

21 A In what --? What do you mean?

22 Q Did you use the word "co-operate"?

23 A No, no.

24 Q Did you tell him at that time that he was wanted
25 for bank robbery?

1 A I believe so.

2 Q You could hear everything that was going on? Did
3 you turn around to watch what was happening in the back
4 seat?

5 A Yes.

6 Q So you saw the squirming around?

7 A Yes.

8 Q If you were sitting in the front seat, how did you
9 inspect his handcuffs in the back seat?

10 A Very simply; just had him bring his head to the
11 front seat. I was turned around already, and I could look
12 back, and I could see that there was light in those cuffs.

13 Q Did the other agent back there, Cronin I believe
14 his name is, did he investigate the cuffs?

15 A He probably did. He probably was also looking.

16 Q When you arrived at the FEI Headquarters in New
17 York, and you took him upstairs, you said you arrived about
18 1:50?

19 A It was approximately 1:50, yes.

20 Q How long were the Marbles together?

21 A Initially?

22 Q Yes, when they got to the building, they were to-
23 gether, I assume?

24 A Yes, no more than probably the time it took us to
25 go up in the elevator. A couple of minutes.

1 Q And she was taken immediately away and put in
2 another room?

3 A Yes.

4 Q Was he told where she was taken?

5 A He may have been, I don't know.

6 Q Did he ask you "What are you doing to my wife?"

7 A I don't believe so.

8 Q Okay. You said that he was then searched again;
9 is that correct?

10 A Yes.

11 Q This would be sometime after 1:50, 1:53, probably;
12 is that correct?

13 A Yes.

14 Q What did that search consist of?

15 A It was a general pat-down search. We were a little
16 bit more specific. We emptied his pockets out.

17 Q Did you take off his clothes?

18 A We may have. Now I'm not sure about this. We may
19 have.

20 Q Is that standard practice, to take off his clothes?

21 A Sometimes.

22 Q What would that involve? You don't recall specifically
23 in this case, but what would that involve, if you
24 searched him thoroughly, according to that practice?

25 A Just disrobing and checking out the body area, and

1 putting the clothes back on.

2 Q How long would that have taken, had that been
3 done? That is a pretty -- that is five or six minutes?

4 A I would say five minutes, three -- five.

5 Q Now you say you read him his rights again when you
6 got to the FBI Headquarters; is that right?

7 A That is correct.

8 Q Did his eyes seem in focus?

9 A They appeared normal to me.

10 Q Is this your handwriting on top of Exhibit 1,
11 Government's Exhibit 1, where it says "Advice of your rights,
12 New York, New York, 10/23/74"?

13 Is that your handwriting?

14 A That's correct.

15 Q Is that your handwriting on the lower left, too,
16 where it says 1:57 p.m.?

17 A Yes.

18 Q So you applied both times?

19 A That's correct.

20 Q After he signed it, did he at anytime request an
21 attorney?

22 A No, he did not.

23 Q After he signed this you say you left; is that
24 correct?

25 A After he signed it, and we asked him -- we were

1 getting personal background on him -- we asked him if he
2 wished to make a statement.

3 Q He said no; is that right?

4 A At this time, he said -- that's what he indicated.
5 He indicated he would wait until he talked to his lawyer.

6 Q He would wait until he talked to his lawyer? Did
7 you hear the word "lawyer"?

8 A I believe he said "lawyer".

9 Q Did you offer to get him a lawyer at that time?

10 A We offered him a phone call, that he could make
11 anytime he wanted.

12 Q You left the room at 2:10, you say?

13 A 2:15.

14 Q I believe that was your testimony on your direct,
15 somewhere in there?

16 A Somewhere around there, that's correct.

17 Q When you came back, who was with him?

18 A Special Agent Ahlerich.

19 Q Was Mr. Cronin with him?

20 A No.

21 Q Did you find out what was going on with Mrs.
22 Marble at that time?

23 A Had I found out?

24 Q Yes.

25 A No, I knew. One agent had told me previous to that,

1 that she had been detained in another interview room; that
2 she had been searched and no weapons had been found, and
3 that she had indicated that she'd like to stay until the
4 final disposition of her husband.

5 Q Okay. Now, when you came back --

6 THE COURT: Was she arrested?

7 THE WITNESS: No, your Honor.

8 Q Was she ever placed under arrest?

9 A No.

10 Q Did anyone say to her "You are under arrest"?

11 A No.

12 Q That you heard?

13 A Nobody that I heard.

14 Q When you came back, Mr. Ahlerich informed you that
15 Mr. Marble had agreed to give a statement; is that correct?

16 A That's correct.

17 Q And you asked Mr. Marble if that was accurate; is
18 that correct?

19 A That is correct.

20 Q At that point, you then gave him this again
21 (indicating)?

22 A Yes.

23 Q You gave him a --

24 THE COURT: You say "this" --

25 MR. CRAIG: I'm sorry. This is Exhibit 2.

1 THE COURT: The record wouldn't disclose it
2 on an appeal, if you say you gave him "this".

3 MR. CRAIG: It is the interrogation, advice
4 of rights, which is Government's Exhibit 2.

5 BY MR. CRAIG:

6 Q It contains a statement of the rights?

7 A That is correct.

8 Q You read that to him again? That would be the
9 third time?

10 A I believe I orally gave it to him the second time.
11 The third time -- I'm not definitely sure. I gave it to
12 him so he could read it over, to make sure it was a copy of
13 his rights that he had previously signed, and that is what
14 his rights were.

15 Q Did you ask him at that time what had happened
16 with respect to the bank robbery? Did you then question him
17 about that?

18 A After he signed this, yes.

19 Q After he signed this you had gotten two signatures
20 here, the first one was Exhibit 1 --

21 A That is correct.

22 Q And then you got him to sign the same document,
23 essentially, Exhibit 2?

24 A That's correct.

25 Q Is that correct?

1 A No.

2 Q Any store?

3 A No.

4 Q Just on the street?

5 A Yes.

6 Q At the time of the arrest there were three people
7 in the group in which the arrest was going to take place;
8 is that correct? The Defendant, the unidentified woman,
9 and the unidentified man?

10 A That is correct.

11 Q And at the time of the arrest, the unidentified
12 male started screaming and hollering and yelling, and making
13 a ruckus; is that correct?

14 A Yes.

15 Q And the unidentified woman stood there, did she?
16 Or did she interfere or anything?

17 A She was mildly protesting what we were doing.

18 Q What was she saying?

19 A I forgot, but it was something: "What did he do?"
20 Or "What's wrong?", or something like that.

21 Q Was she arrested at that point?

22 A No.

23 Q Why was she taken into custody and taken down to
24 the station?

25 A One, she would not identify herself.

1 Q Did the other person identify himself?

2 A Yes, he did.

3 Q She did not give you a name?

4 A No, she would not.

5 Q Did she try to resist arrest?

6 A She was not arrested.

7 MR. DABROWSKI: Your Honor, I object as to
8 the relevancy of this. I don't see what bearing
9 this has on the issues before this Court at this
10 time.

11 MR. CRAIG: Your Honor, one of the elements
12 of the motion that is developing here is that the
13 statement that was procured from the Defendant
14 was procured on the basis of threats made against
15 his wife. They said "If you do not co-operate,
16 your wife will go to jail, and your wife will be
17 arrested."

18 This is one of the bases of the motion which
19 the defense claims, that kind of coercion and
20 durens was utilized.

21 The question as to the relevancy of arresting
22 of Mrs. Marble, taking her into custody, hand-
23 cuffing her, and taking her in, under cover of
24 three agents, down to the FBI Headquarters, is
25 certainly pertinent to the core of the Defendant's

1 motion.

2 THE COURT: If that is your claim, the Court
3 will allow it.

4 Proceed.

5 BY MR. CRAIG:

6 Q Did she resist being put into custody?

7 A We didn't really put her in custody. She didn't
8 resist, no.

9 Q Why was she handcuffed?

10 A We had received information from the New York City
11 Police Department that the subject had been arrested in
12 July that year, on charges of armed robbery. And at that
13 time, he had in his possession a pistol.

14 Q No, my question is --

15 MR. DABROWSKI: The witness should be allowed
16 to finish his answer.

17 THE COURT: You may finish it.

18 A (Continuing) Also in our investigation, we
19 determined from the DEA, the Drug Administration, that an
20 agent who had handled Mr. Marble previously had indicated to
21 me personally that Mr. Marble always carried a weapon on him.

22 When we stopped Mr. Marble on the street, we didn't
23 have time to give him a complete pat-down. This individual,
24 we didn't know who he was with -- we didn't know who she was.
25 But we knew she was with him.

1 For this reason, we took -- until we could find
2 out who she was, we handcuffed her, in case the weapon was
3 with her, or in case she had a weapon -- for our own pro-
4 tection. We handcuffed her. We took her in the car until
5 we could find out and establish who she was.

6 Q Why didn't you arrest the other person?

7 A At this time, the two detectives from the New
8 York City Police Department were talking to him, further on
9 down the street. And we had no interest in this individual,
10 as far as we knew at this time they were talking to him;
11 they knew that we had this individual that we were interested
12 in, and we left.

13 Q Okay. On Government's Exhibit 2, it indicates
14 the time in the upper right-hand corner, in your handwriting,
15 I believe. Is that your handwriting in the upper right-hand
16 corner, where the time is?

17 A No, I don't believe it is.

18 Q Can you testify as to who put that time in there?

19 A That would have been Special Agent Ahlerich.

20 Q What about in the middle of the page in Government's
21 Exhibit 2? Who put the time in?

22 A That would have been Special Agent Ahlerich.

23 MR. CRAIG: I have no further questions.

24 MR. DABROWSKI: I have no further questions.

25

1 EXAMINATION BY THE COURT:

2 Q I was just curious. He signed the waiver of his
3 rights, Government's Exhibit 1, and at that time he made
4 reference to the fact that he wanted to talk to his attorney;
5 is that correct?

6 A I believe he said that, sir. I'm not so sure,
7 but I believe he wished -- he said he wished not to make a
8 statement.

9 Q So I would inquire, what was the reason for having
10 him sign the second waiver of rights? What was your purpose
11 in having him do that?

12 A That's standard Bureau policy, whenever we take a
13 signed statement from anyone we always begin it -- at least
14 the bank robbery squad does -- on the advice of rights, so
15 that in case a question ever does come up as to whether
16 this individual was given his rights, the initial part will
17 be on the interrogation of advice of rights.

18 Q And was the fact that he had previously told you
19 he didn't want to make a statement, until his attorney was
20 present, was that a second reason why you asked him to sign
21 the second waiver of rights?

22 A No, your Honor. It is merely policy.

23 Q Did you ask him, in view of the fact that his
24 statement was that he didn't want to make a statement to you,
25 because his attorney was not present, or he did not have

1 an attorney -- did you ask him or make any inquiry of him,
2 that had he changed his mind or his stand or posture or
3 position; that "Do you want an attorney here before you give
4 this statement?"

5 A No, your Honor, I did not.

6 Q In other words, you sort of took it for granted,
7 in view of the fact of his willingness, that had originated
8 outside of your presence, that he was willing to give a
9 statement, in the light of his previous position, that it
10 was an act on his part of his own free will?

11 A That is correct. We gave him the interrogation
12 advice of rights form initially. He read it; he stated to
13 us that he did understand his rights, and he signed it.

14 Upon my return to the interview room, I was in-
15 formed that he had changed his mind; that he did now wish --

16 Q Who informed you of the fact that he had changed
17 his mind?

18 A Special Agent Ahlerich.

19 Q Is he here today?

20 A Yes, he is, your Honor.

21 I then, at this time, asked Mr. Marble if that was
22 correct. He said it was correct.

23 I then furnished him another interrogation advice
24 of rights form, and had him read it over to make sure he
25 understood his rights. And then we proceeded.

1 Q Where was his wife at this time?

2 A She was in another interview room on the same floor.

3 Q Was there anything discussed in your presence
4 about what treatment would be given to his wife, or was
5 there any threat made concerning how his wife would be
6 treated, how she would be arrested or incarcerated?

7 A No, your Honor. After we did learn of her identity --

8 Q How did you learn that?

9 A On the way back to our office, Mrs. Marble indicated
10 that she was, in fact, Diane Marble, and nothing was said
11 in regard to what was happening to her.

12 There was a question of why she was being brought
13 back to the office, and we tried to explain it to him, to
14 Mr. Marble, and to his wife, the reason for it.

15 Q And what reason did you give?

16 A Well, one, we wanted, after we had determined who
17 she was, we did not know for sure -- there was the question
18 of whether or not there was a violation of the harboring
19 statute.

20 However, it was determined that, from Mr. Marble's
21 own testimony, that he had just met her on the street; that
22 there was nothing to present to the United States Attorney.

23 Q I was curious, why handcuffs were put on her, in
24 view of the fact that you claim she was not arrested. She
25 couldn't have gone anywhere, could she? Was she in custody?

1 A No, your Honor, she could not have gone anyplace,
2 but at that time, there were three male agents. We did not
3 search her purse at that time, nor could we search her
4 physical body at that time.

5 Therefore, the handcuffs were put on strictly for
6 our own protection, in case there was a weapon hidden.
7

8 Q Until she got to the station?

9 A That's correct. At that time, she was searched by
10 a female agent, and cuffs were then removed.

11 Q Is that the general practice in the Department,
12 under conditions that existed here? Are those the general
13 rules?

14 A I can't speak for the Bureau; those would be my
15 rules, your Honor, for an arrest when I'm not sure if an
16 individual has a weapon or not. I always will handcuff them
17 for the protection of the agents.

18 Q Was there any threat made to this Defendant con-
19 cerning what treatment would be given to his wife if he
20 didn't complete this statement and sign it?

21 A No, your Honor, none whatsoever.

22 Q I believe there is a case on that, specifically,
23 that originated in New Haven. Where the Deputy Chief of
24 Police supposedly said to the Defendant "If you don't give
25 us a statement, we'll call your wife and get her down here,
 and she may be involved." And he gave a confession, and the

1 Supreme Court said that was a threat.

2 That's why I'm inquiring about that aspect. I
3 can't recall the name of it now -- maybe counsel can remind
4 me. But the Supreme Court reversed the conviction on that
5 ground.

6 Now, do you know whether or not any officer in
7 your presence made any threat to this Defendant concerning
8 what treatment would be given to his wife if he didn't
9 make a statement, or sign a statement?

10 A No, your Honor.

11 Q No one did in your presence?

12 A No one did in my presence.

13 Q Did he and his wife talk together after they were
14 once placed in the separate interrogation rooms?

15 A Yes, they did, your Honor. After Mr. Marble
16 furnished us his signed statement, we fingerprinted him and
17 photographed him, and he requested to confer with his wife.
18 And we put them in the same room, without an agent, for
19 approximately five or ten minutes.

20 Q But at no time prior to signing the statement were
21 they placed together?

22 A No, your Honor, I don't believe so.

23 Q Now, in regard to his condition in respect to
24 drugs, are you familiar with observing people who are in the
25 habit of taking heroin or cocaine?

1 THE COURT: All right. Any other questions
2 in light of the Court's questions, gentlemen?

3 MR. CRAIG: I have some, your Honor.

4 THE COURT: All right, let's proceed.

5 RECROSS EXAMINATION BY MR. CRAIG:

6 Q At the time of the arrest on the street, when he
7 had his hands up against the wall, were any weapons found
8 on the person of Mr. Marble?

9 A No, there were not.

10 Q Were there any weapons found on his person at any
11 time during the arrest?

12 A No.

13 Q Either on the street or down at the FBI office?

14 A No.

15 Q Were any weapons found on Mrs. Marble at any time?

16 A No.

17 Q You said that from your observation of Mr. Marble,
18 you concluded he was not on any kind of medication or on any
19 drugs. What about Mrs. Marble?

20 A No, she appeared rational, also.

21 Q The same kind of intelligence, same kind of
22 acuity, and alertness?

23 A Yes.

24 Q When you searched Mr. Marble, did you come across
25 a wallet?

1 A I believe we did.

2 Q Did you look through the cards?

3 A At that time, on the street, or later on?

4 Q Or at the headquarters?

5 A Yes.

6 Q Either place?

7 A Yes, we did.

8 Q Prior to his statement?

9 A Yes.

10 Q Did you find in his wallet a methadone card? That
11 made him part of a methadone treatment program?

12 A I don't recall.

13 Q You said there was some consideration -- some con-
14 sideration of whether or not Mrs. Marble had violated the
15 harboring statute. Was that discussion in the presence of
16 Mr. Marble?

17 A I believe that was in an answer to one of his
18 questions, yes. He would have been present.

19 Q Did he inquire as to what was going to happen to
20 his wife?

21 A I think his question, to the best of my recollection,
22 was why we had handcuffed this individual, and why this
23 individual was coming with us at the time. At which time,
24 we indicated that we wanted to find out who this individual
25 was.

1 Thereafter, it was determined, later on, on the
2 trip back to the office -- I believe it was at this time
3 that she did indicate to us that she was, in fact, Diane
4 Marble.

5 And I think the question was "Why don't you let
6 her go now?" or something like that.

7 And I believe that it was myself that indicated
8 that she would be processed at the station, and I think the
9 topic of conversation was that we didn't have a right to
10 take her. And I said "Well, there could be a possible
11 violation of the harboring statute here", and that's the way
12 the course of the conversation went.

13 Q That was with Mr. Marble?

14 A Yes.

15 Q And that is the reason she wasn't released, after
16 she came back in the car? You say that she told you her
17 name in the car; is that correct?

18 A Yes.

19 Q So the identity question was resolved; is that
20 right?

21 A Yes.

22 Q The car came to the FBI center; why wasn't she
23 released at that time, at that point, was it because of the
24 harboring statute?

25 A No, she indicated at this time that she would like

1 to stay with her husband until the final disposition of his
2 case.

3 Q But she still had handcuffs on?

4 A That is correct.

5 Q And she was searched thereafter?

6 A That is correct.

7 Q When you left the room -- one last question --
8 when you left the room, how long were you out of the room,
9 the interrogation room?

10 A Three or four minutes.

11 MR. CRAIG: That's all, your Honor.

12 THE COURT: Any questions?

13 MR. DABROWSKI: No further questions.

14 THE COURT: Thank you.

15 (Witness excused.)

16 MR. DABROWSKI: The Government calls Milton
17 Ahlerich.

18

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1 advised of his rights at the time of the arrest on the
2 street?

3 MR. CRAIG: Your Honor, the agent can testify.

4 It is a leading question; I object to it.

5 THE COURT: The Court will allow that. Was
6 there any reason why he wasn't given his rights
7 then at the moment? The Court will allow it.

8 Proceed.

9 THE WITNESS: We had numerous people on the
10 street. This one individual, who I said was in
11 the general area, became pretty angry and started
12 making some statements to the arresting agents,
13 including myself, and engaged us in a rather heated
14 conversation.

15 Q What kind of statements, and what did you mean by
16 rather angry?

17 A Well, he was swearing at me, and advising that we
18 couldn't arrest Mr. Marble. I don't recall everything that
19 was said, but some pretty harsh swear words that were thrown
20 my way during these few moments, which drew a crowd. A lot
21 of people started gathering around the area.

22 Q This was the reason why he was then placed in
23 the car?

24 A Yes, sir, for the agents' -- for our safety, we
25 put him in the car with the female that he was with that

1 didn't identify herself, and we moved away from this area
2 to avoid any problem, for our own personal safety.

3 Q Where were you seated in that vehicle, do you
4 recall?

5 A I believe I got in the back with the subject.
6 Now, I can't be positive of that.

7 Q Do you recall where -- was the female also in the
8 car?

9 A I believe she was, yes.

10 Q And do you recall where she was seated?

11 A I don't.

12 Q Was the Defendant, Horace Marble, handcuffed?

13 A He was.

14 Q And was he handcuffed on the street?

15 A He was, yes.

16 Q How about his wife; was she handcuffed at this time?

17 A Well, we didn't know it was his wife at this time.
18 But, she was restrained with handcuffs, yes.

3 19 Q Was there any particular reason why she was hand-
20 cuffed?

21 A Agents' safety. We felt that Mr. Marble was
22 armed, and we felt that there could be a weapon involved
23 here; she might have the weapon concealed in her purse, or
24 on her person. Just as a precautionary matter.

25 Q You didn't search this female?

1 A No, sir, I did not.

2 Q Where did you go in the car?

3 A We proceeded directly to our office at 201 East
4 69th Street.

5 Q Do you recall what time you arrived at your office?

6 A It took approximately 20 minutes to get there. I
7 would say about 1:45, 1:50.

8 Q While you were traveling to the office during
9 these 20 minutes, did any conversations occur between any
10 of the individuals in the vehicle?

11 A Well, Agent Mortensen went over the rights, as
12 outlined on this little card that he had.

13 Q What do you mean by going over?

14 A He read the Constitutional rights from the form,
15 the interrogation of rights form, which is a standard form
16 that FBI agents use to advise a man of his Constitutional
17 rights at the time of his arrest, or prior to any interroga-
18 tion.

19 Q Do you recall any other conversations that occurred?

20 A The girl was in the car, and we were able to
21 ascertain her identity was Mrs. Marble, through talking to
22 her in the car.

23 Q She at some point in the car identified herself
24 as being the wife of Mr. Marble?

25 A Yes.

1 Q Do you recall any other conversations?

2 A No, sir. There may have been some other conversa-
3 tions.

4 Q Was there any conversation with regard to why Mrs.
5 Marble was handcuffed, or whether she was under arrest?

6 A We told her that we were restraining her, that
7 she was being taken to our office so that we could identify
8 who she was, and so she could be searched.

9 Q After she identified herself, with regard to who
10 she was, did she then further inquire, or make any inquiries
11 as to why she was either under arrest or being transported?

12 A I think she raised some objection, but, you know,
13 she would like to know why she was being brought in, and we
14 told her she was being brought to our office so that we
15 could determine definitely who she was, and so we could have
16 a female search her person, for our own safety.

17 Q In other words, you wanted to verify the fact that
18 she was Mrs. Marble, even though she had told you?

19 A That's correct.

20 Q You arrived at the office, you testified -- you
21 arrived at the office approximately 20 minutes later. That
22 would be about 1:50?

23 A That's right.

24 Q Where did you go when you arrived at the office?

25 A I proceeded with the subjects -- with Mr. Marble,

1 A A couple of minutes. Just right up in the
2 elevator.

3 Q What happened on your arrival at the room?

4 A We sat down. Agent Mortensen provided -- we
5 again explained the whole situation to Mr. Marble, as to
6 what the situation was.

7 And Agent Mortensen again identified himself,
8 provided Mr. Marble with a form, which is called an interro-
9 gation advice of rights, which he read.

10 Q You say you explained the situation; what was the
11 situation that you explained?

12 A That he was under arrest.

13 Q Did you advise him what he was under arrest for?

14 A Yes. Again -- and at this point, we advised him
15 that we wanted to question him regarding another crime,
16 bank robbery.

17 Q What did you tell him he was under arrest for?

18 A At that time, he was under arrest for parole
19 violation.

20 Q Then you told him he was also being investigated
21 with regard to another crime?

22 A We told him we wanted to ask him some questions
23 about it, yes.

24 Q Was that the first time you mentioned the other
25 crime to him?

1 A I think so, yes.

2 Q And the other crime you are referring to is the
3 bank robbery?

4 A Yes, sir.

5 Q What was his response to that inquiry, if any?

6 A After he read the form and had taken a look at
7 that, he said he'd rather not talk about that at this time.

8 Q By the form -- showing you Defendant's Exhibit 1 --
9 is that the form you are referring to?

10 A Yes, sir.

11 THE COURT: Did he give any reason?

12 THE WITNESS: I don't recall. He said "I'd
13 just rather not talk about it at this time."

14 THE COURT: Did he mention a lawyer?

15 THE WITNESS: No, sir.

16 BY MR. DABROWSKI:

17 Q Can you estimate the time this occurred?

18 A It is filled in on the form. The exact time I
19 could tell you by looking at the form. We look at our
20 watches when we pull things out.

21 It was given to him at 1:55 p.m. And it is signed
22 and witnessed by myself and Agent Mortensen at 1:57 p.m.

23 Q So approximately seven minutes after you arrived
24 at the building, he executed Government's Exhibit 1, and
25 then advised you -- or, what did he say to you with regard

1 to any statement?

2 A He stated he'd rather not say anything at this
3 point.

4 Q Where was Agent Mortensen at this time?

5 A He was in the room at this time, with us, with
6 myself and Mr. Marble.

7 Q What happened after he advised you that he didn't
8 desire to say anything?

9 A Agent Mortensen left the room to make arrangements
10 for fingerprinting, photographing.

11 Q Did there come a time when Agent Mortensen came
12 back?

13 A Yes, sir, there did.

14 Q How much time elapsed during that period, during
15 the period he was away?

16 A About ten minutes.

17 Q Now, with regard to the initial statement, upon
18 reading and executing Government's Exhibit 1, which is the
19 interrogation advice of rights form, he stated that he did
20 not desire to say anything at this time. Are you certain
21 he also didn't mention anything about an attorney?

22 A Oh, yes, sir, he didn't say he needed an attorney.
23 He said he'd rather not make any statements at this time.

24 Q And at that point, Agent Mortensen left the room?

25 A He did.

1 Q And now, what transpired during the period that
2 you were at the scene with just you and Mr. Marble in that
3 interview room?

4 A I began asking background questions, height,
5 weight, date of birth, place employed, where he had been in
6 the last few months, where he was working -- personal back-
7 ground data, identifying data.

8 Q And did he respond to your questions?

9 A Yes, sir, he did.

10 Q By providing you his name and address?

11 A All the questions that I asked, he voluntarily
12 gave to me.

13 Q Was anything further mentioned about the bank
14 robbery by you?

15 A No, sir, not at that point.

16 Q Did there come a time when the bank robbery did
17 become a subject of conversation between you and Mr. Marble?

18 A Yes, sir.

19 Q How did that arise?

20 A I hadn't been interviewing -- I hadn't been taking
21 too many questions, and I asked a few, when he stated that
22 the more he thought about this thing that he thought it
23 probably would be best to get it out in the open and talk
24 about it.

25 Q And by his statement, this thing --

1 A The bank robbery.

2 Q The bank robbery? He indicated he wanted to get
3 it out in the open?

4 A Yes, sir.

5 Q What was your response to that?

6 A I said this would be something that he would have
7 to do -- it is not something that anybody else can make up
8 his mind for him. It was something that he would have to
9 do.

10 And approximately at this time, Agent Mortensen
11 came back into the room. I informed Agent Mortensen that
12 Mr. Marble had indicated that he wanted to talk about the
13 bank robbery.

14 At this time, Agent Mortensen pulled out another
15 advice of rights form, identical to that form there (in-
16 dicating).

17 Q During this period, were any promises of any
18 nature made by either you or Agent Mortensen, or any agent?

19 A No.

20 Q Were any promises made to Mr. Marble?

21 A No.

22 Q Was anything mentioned with regard to what would
23 have happened to his wife?

24 A No, sir.

25 THE COURT: Was there any threat made about

1 back seat?

2 A When we arrived?

3 Q To arrest him, when you pulled up beside him?

4 A I can't say. I honestly can't.

5 Q Did you have your gun drawn when you left the car?

6 A Yes, sir, I did.

7 Q Did anybody else have a gun drawn?

8 A Yes, sir, they did.

9 Q Did you say anything when you got out of the car?

10 A Yes -- to whom? To anybody?

11 Q What did you say when you got out of the car, if
12 anything?

13 A He was placed under arrest by the agent in front
14 of me.

15 Q Who was the agent in front of you?

16 A Agent Mortensen moved up, and Agent Cronin were
17 both in front of me. I was back a little bit from these two
18 fellows that actually put him up against the wall.

19 Q Did they both have their guns drawn?

20 A I think so.

21 Q Okay, continue.

22 A My function, when I observed that they were -- that
23 they had him against the wall, and they were putting the
24 handcuffs on him, and a protective search had been made.

25 Q A quick pat-down?

1 A A quick pat-down on the street -- my function was
2 to watch the back of the agents, and to secure the surround-
3 ding area, which we began to have a problem.

4 Q At anytime, did you see a shotgun or a rifle?
5 Did, you at anytime?

6 A No, I don't think so.

7 Q Did you speak with the woman at anytime?

8 A Yes.

9 Q At that arrest?

10 A Yes, his wife was there.

11 Q What did you say to her?

12 A I think I asked her what her name was at that
13 point.

14 Q Did she give you an answer?

15 A I believe she gave a fictitious name. I believe
16 she gave us some fictitious name, or a name which was not
17 her true name.

18 Q How did you know it was a fictitious name, if you
19 didn't know who she was?

20 A I think some identification was shown, which later
21 on proved that to be a fictitious name.

22 THE COURT: She didn't give you the name of
23 Mrs. Marble?

24 THE WITNESS: No, not at that point.

25 Q Did she show identification at that point?

1 A I don't think so, no.

2 Q Was her purse searched at that time?

3 A I think after we got in the car, the purse, it
4 was taken away from her. It was taken away from her person.
5 But, actually searched, I didn't search it, I can tell you
6 that.

7 Q Did you say that "You are under arrest"?

8 A No.

9 Q Did you hear anybody say that?

10 A No.

11 Q But she was put in handcuffs?

12 A She was.

13 Q The handcuffs were behind her back at that time?

14 A I don't think so -- I think they were in front.

15 Q What about Mr. Marble?

16 A In back.

17 Q Did you have, at that time, a warrant for their
18 arrest on your person?

19 A I'm sorry, sir?

20 Q Did you have a warrant for their arrest?

21 A For the arrest of whom?

22 Q Mr. Marble.

23 A I did not have it, no, sir.

24 Q Had you seen one?

25 A No, sir, I had not.

1 Q In the car, you testified earlier that you learned
2 the true identity of the woman who had been taken in
3 custody; is that correct?

4 A Yes, sir.

5 Q Incidentally, was she free to leave at that time?
6 If she wanted to go, could she have left?

7 A At what time?

8 Q When you arrested her, when you came up to her
9 and put handcuffs around her, could she have gone? Could
10 she have left?

11 A No.

12 Q She couldn't have left? She was in custody then?

13 A She was being detained.

14 Q It is fair to say that she was in custody?

15 A My words are she was detained.

16 Q In what circumstances did you find out the real
17 identity -- what was the circumstances of that?

18 A I think she admitted her real identity in the car,
19 going down there.

20 Q Did you ask her again?

21 A I didn't; I believe other agents did.

22 Q What were the circumstances? Did someone else
23 ask her?

24 A "Who are you? What is your true name? Who is this
25 man?"

1 Q Was she read her rights?

2 A No.

3 Q After you got the identity of her, she said Diane
4 Marble; was there anymore conversation between you and her?

5 A I don't recall any, no.

6 Q Do you recall any mention of the harboring act at
7 all, at any point in the car?

8 A No, sir.

9 Q Do you recall any statement about co-operation
10 that was made in the car, to Horace Marble?

11 A I don't recall it.

12 Q Did any agent ask Horace Marble if he was willing
13 to co-operate, in the car?

14 A Willing to co-operate in connection -- I don't
15 understand that question.

16 Q It is a simple question: Did you hear anybody ask
17 Horace Marble in the car --

18 A No, I didn't.

19 Q -- if he was going to co-operate?

20 A No, there were general questions asked of Mr.
21 Marble.

22 Q What were the questions asked of Mr. Marble in
23 the car?

24 A Who was he, where had he been, where did he live?
25 Identity type questions.

1 THE COURT: We will suspend at this point.

2 (Whereupon, court was recessed until two p.m.)

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10 JANUARY 9th, 1975, AFTERNOON SESSION:

11 CROSS-EXAMINATION BY MR. CRAIG, CONTINUED:

12 Q We left off before lunch, Agent Ahlerich, and you
13 said he had told you, Mr. Marble, the Defendant, he had told
14 you that he had taken methadone that day; is that correct?

15 A Yes, sir.

16 Q Did he tell you that before he gave the statement?

17 A Yes.

18 Q Did he tell you that before he told you that he
19 wanted to give a statement?

20 A Yes, sir.

21 Q The interrogation continued, though?

22 A As to background information, yes, sir.

23 Q Did you ever ask him how much methadone he had
24 taken?

25 A I think the question that I asked him was "Have

1 A Yes, everybody was there.

2 Q Now, at what point, in your judgment, was Mrs.
3 Marble free to leave?

4 A As soon as the strip search had been conducted.

5 Q Of her?

6 A Of her.

7 Q Do you know for a fact that she was told at that
8 time that she could leave?

9 A Yes, sir, she was -- no, I wasn't present when she
10 was told, but as soon as we found out, and Mortensen and I
11 found out that there was no weapon on her, she could go;
12 there was no further need of her being there.

13 Q Did you find out she had no weapon on her and
14 was told that she could go before the statement was taken
15 from Mr. Marble, or did that take place afterwards?

16 A I would say probably it would be during, during
17 the time we were taking the statement someone came to the
18 interview room that we were in and said that the female
19 agent had completed the search, and they gave us what was
20 found.

21 Q So it was after Mr. Marble had agreed to provide a
22 statement to you that he found out -- did you tell him
23 "Your wife is being released"?

24 A Yes, sir, he knew that.

25 Q At what point did he know that?

1 A I can't honestly tell you. But in that time frame,
2 of taking the statement -- he asked to see her, I do re-
3 member that. He asked to see her before she left. He
4 wanted to talk to her, and he did in fact talk to her after
5 we got the statement.

6 Q That was after the statement was given?

7 A Yes, that's right.

8 Q But he was informed about her when the statement --
9 after the statement had been taken from him?

10 A Yes, that's my recollection, I think.

11 MR. CRAIG: I have no further questions.

12 REDIRECT EXAMINATION BY MR. DABROWSKI:

13 Q You stated during the time that the statement was
14 being taken from Mr. Marble, he asked if he could see his
15 wife; is that correct?

16 A While we were there in the office, he said "Before
17 she leaves, I'd like to see her; I'd like to talk to her."

18 Q He knew she was going to leave?

19 A I assume he did, yes.

20 Q Were those his words, "Before she leaves, I'd like
21 to see her"?

22 A I can't say that positively. It is my recollection
23 he said "I want to talk to her." We said "Fine, you'll get
24 a chance to speak to her."

25 Q Was it the female agent who came to the interview

1 Q Do you recall the amount, the quantity of methadone
2 you took?

3 A 90 milligrams.

4 Q And then, continue, what happened? What was the
5 location that you met your wife?

6 A 110th Street, between Eighth and Seventh Avenue.

7 Q Was that meeting prearranged, or was it --

8 A No, we then went back to Lenox Avenue, and went
9 up to 112th Street.

10 THE COURT: Where were you living at the time,
11 Mr. Marble?

12 THE WITNESS: 118th Street, between Lenox and
13 Seventh Avenue.

14 Q Is that Central Harlem in New York City?

15 A Yes.

16 We went back to Lenox, to 112th Street. From
17 112th Street, we walked over to Seventh Avenue. As we were
18 crossing the street, I saw that which I thought was either
19 policemen or gangsters, or something. All I know they
20 looked to be looking at me.

21 And I told my wife, I told her these are either
22 gangsters or they are police.

23 So when we got to the corner, the car turned, so
24 I knew it was either one or the other.

25 Q Did you have any reason, Mr. Marble, to suspect

1 that it was gangsters?

2 A Yes.

3 Q What was that reason?

4 A I was a Government witness not too long ago.

5 Q And what happened?

6 A Well, my life had been threatened.

7 Q Go on. Go on with your story.

8 A Then the agents pulled in and jumped out of the
9 car and drew guns. I looked the other way, and I saw more,
10 excuse the expression, more white guys standing, one with a
11 rifle or shotgun, and another one with a pistol.

12 I heard one of them say "Turn against the wall."

13 I turned against the wall, and two or three of
14 them approached me, and patted me --

15 Q Let me interrupt at this point. How many agents
16 did you see, do you recall?

17 A I saw five men. I didn't know they were agents
18 at the time. I saw five men.

19 Q How many guns did you see, can you recall?

20 A I saw four guns and one rifle or shotgun.

21 Q Okay. One of the men shouted something at you?

22 A Put my hands against the wall, don't move.

23 Q What did you do then?

24 A I put my hands against the wall. I was scared.

25 Q What happened then?

1 A One of them came up behind me -- two of them
2 came up behind me. One patted me down; another one hand-
3 cuffed me.

4 Q Did they still have their guns drawn at that
5 point?

6 A Yes.

7 Q How close were the guns to you, do you recall?

8 A About a foot, a foot and a half away from me.

9 Q Do you recall if any of the guns were pointed at
10 your wife?

11 A I assumed they were.

12 Q Did you have occasion to observe her demeanor,
13 how she was responding?

14 A She was just standing there, looking. She was
15 trying to see what was going on.

16 And I asked "What's going on? Who are you? What's
17 going on?"

18 Q Then you testified that they handcuffed you?

19 A Yes.

20 Q They handcuffed you in front, or in back?

21 A In back.

22 Q Do you recall whether they handcuffed your wife?

23 A No, they pulled me from the wall and had put me
24 in a car. And after that they put my wife in next to me.

25 Q Were you in the middle or was your wife in

1 the middle?

2 A I was in the middle.

3 Q And was your wife on your left or on your right?

4 A She was on my left, and the agent, I don't re-
5 member his name -- "Ostrich" --

6 Q Agent Ahlerich?

7 A Ahlerich.

8 Q Is he in the courtroom today?

9 A Yes.

10 Q He was on your right?

11 A Yes, he was on my right.

12 Q Now, do you recall any conversation that took
13 place at that point?

14 THE COURT: Do you want your witness to
15 remain in here?

16 MR. CRAIG: I would request that she be
17 sequestered, your Honor. That is for the record
18 purposes, and the validity of her own testimony.

19 THE COURT: You arrange it.

20 (Pause.)

21 BY MR. CRAIG:

22 Q Did any conversation take place in the automobile?

23 A Yes.

24 Q Would you tell us what that was?

25 A They asked me my name. I wouldn't give them my

1 name. Then one of them said "Oh, we know who he is, be-
2 cause this is his wife". He had a card or identification
3 or something in his hand.

4 He went in the bag and he had the identification.

5 He said "Well, we know who he is."

6 Q Excuse me. Did they go into her pocketbook?

7 A Yes.

8 THE COURT: Why didn't you tell them who you
9 were?

10 THE WITNESS: I didn't know who they were.

11 THE COURT: Didn't they show you their badge?

12 THE WITNESS: Not at that time.

13 THE COURT: Their identification?

14 THE WITNESS: Not at that time.

15 THE COURT: What did they say to you?

16 THE WITNESS: They didn't say nothing; just
17 threw me in the car.

18 THE COURT: They didn't say that they were
19 the FBI or anything?

20 THE WITNESS: Not at that time, no.

21 THE COURT: All right.

22 BY MR. CRAIG:

23 Q Okay, they asked you your name; you wouldn't tell
24 them.

25 What else happened?

1 A I asked them what they were arresting her for,
2 my wife? I didn't say my wife; I asked what they were
3 arresting her for?

4 They said "We're going to arrest her for aiding
5 and abetting."

6 I said "Aiding and abetting what?"

7 And they said "For aiding and abetting you."

8 And the conversation kept up. I said "She didn't
9 aid and abet me; I just ran into her on 110th Street."

10 Q Did they, at any time, tell you what crime you
11 were being arrested for?

12 A No.

13 Q Did they mention a bank robbery at that time?

14 A No.

15 Q Was this conversation taking place while you were
16 in the car?

17 A Yes.

18 Q The car was moving?

19 A Yes.

20 Q Okay, carry on. What happened next?

21 A I was complaining about my handcuffs, that were
22 too tight. And I believe it was Ahlerich first, he said
23 to me, "You better think about co-operating, because if you
24 don't, your wife is going to be arrested, instead of
25 worrying about your hands."

1 THE COURT: I didn't hear that last statement.

2 THE WITNESS: I should worry about my wife
3 being arrested, instead of about my hands.

4 Q Was there another agent in the front seat of the
5 car?

6 A Yes.

7 Q Can you remember who that agent was?

8 A I don't remember his name, I couldn't remember
9 his face.

10 Q Okay. Was there any more conversation in the car?

11 A They asked me again if I was going to co-operate
12 with them.

13 Q What did you say?

14 A I told them no; had nothing to say to them.

15 Q You said "No, I have nothing to say"?

16 A "I have nothing to say to you." And again they
17 brought to my attention that they were going to arrest my
18 wife for aiding and abetting.

19 Q Did they ask your wife her name?

20 A No, they knew who my wife was, because she was in
21 the car.

22 THE COURT: Did they tell you what you were
23 arrested for?

24 THE WITNESS: No.

25 THE COURT: You didn't know why you were arrested?

1 THE WITNESS: No, I didn't know what I was
2 arrested for.

3 THE COURT: Just minding your own business,
4 and somebody arrested you for nothing; is that it?

5 THE WITNESS: I knew I was being arrested
6 after they put handcuffs on me. I knew I was
7 arrested. But I did not know what I was arrested
8 for.

9 THE COURT: That's the question, for what?
10 You didn't ask?

11 THE WITNESS: No, I didn't ask.

12 THE COURT: You didn't ask? Weren't you
13 concerned about that? I'd want to know what I
14 was being arrested for.

15 THE WITNESS: Yes, I was concerned.

16 THE COURT: But you didn't ask?

17 THE WITNESS: No, I didn't think of it at
18 the time. I was scared.

19 THE COURT: All right.

20 BY MR. CRAIG:

21 Q You were sitting next to your wife in the car?

22 A Yes.

23 Q Did you have a chance to observe her, in the car?

24 A Yes.

25 Q What was your observation then?

1 A She was handcuffed.

2 Q Anything else about her physical demeanor?

3 A She was scared; she was shaking.

4 Q How could you tell she was scared?

5 A I felt it, I could feel it.

6 Q Any other conversation in the car?

7 A I believe my wife asked them why she was being
8 arrested, why they were taking her to the station.

9 Q Did any agent ask your wife's name?

10 A Getting in the car, one agent was asking my wife's
11 name, and the other one came up and said "Oh, this is her,
12 her name is Diane Marble". He had identification in his
13 hands.

14 Q Do you know where he got that identification?

15 A From her pocketbook.

16 Q Do you know where you were transported next?

17 A Downtown, 59th -- 69th, I'm not sure.

18 Q What happened then?

19 A They took us upstairs to a small room, and asked
20 me to take off all my clothes.

21 Q Was your wife with you at that time?

22 A No, they had taken her in another room. An agent
23 -- they couldn't find a woman to search her.

24 Q Now, between the time of your arrest and the time
25 of your arrival up at headquarters, had any agent told you

1 at that time that you had a right to remain silent?

2 A No.

3 Q Did any agent tell you you had a right to an
4 attorney?

5 A No, not at that time.

6 Q Did any agent tell you that you had a right --
7 that anything you said would be used against you in court?

8 A No.

9 Q Did any agent mention the bank robbery?

10 A After they had searched me, yes, he did mention
11 the bank robbery.

12 Q Was this in the car or was this in the building,
13 in the FBI Headquarters?

14 A I believe he mentioned it once in the car and
15 also in the FBI building. I'm not sure about the car.

16 Q All right. Are you sure about the FBI building?

17 A Yes.

18 Q Do you remember the context, what he said about
19 the bank robbery?

20 A He said if I didn't give him a statement, that
21 my wife was going to be arrested.

22 THE COURT: Who told you that?

23 THE WITNESS: Both of them were in the room
24 at the time.

25 THE COURT: Who told it to you?

1 THE WITNESS: Mr. Mortensen. This was the
2 second or third time he had told me, because the
3 other one had told me first that they were going
4 to arrest my wife for aiding and abetting.

THE COURT: Did you give him a statement then?

THE WITNESS: No.

BY MR. CRAIG:

Q Did they ask you if you would give a statement?

9 A Yes, and I told them I wouldn't; I had nothing to
say.

Q At anytime, did you mention an attorney?

12 A Yes, I told him at one time -- the last time I
13 think he asked me did I have anything to say, and I told him
14 no, I don't have anything to say unless my attorney is here.

Q Was that before you signed the statement?

A Yes, that was before I signed the statement.

17 Q All right. Now, Government's Exhibit 1, which has
18 been introduced in the hearing today, I am going to give it
to you and ask you if that is your signature?

A Yes, it is.

8 Is that your signature?

A Yes

9. Do you remember signing this statement?

— 1 —

Q. Did you know what you were starting when you signed up?

1 signed it?

2 A No, I thought it was a part of the information he
3 was getting down.

4 Q What kind of information was he getting down?

5 A My address, where I was staying, where I worked.

6 Q Were you filling out other forms?

7 A Yes.

8 Q What kind of forms were those, with your name on
9 them?

10 A Yes, with my name, my address, where I lived,
11 where I last worked.

12 Q At this time, both agents were in the room with
13 you?

14 A Yes, both of them.

15 Q Did there come a time when one of the agents left?

16 A Yes.

17 Q Which agent was that?

18 A Mortensen left.

19 Q What happened then?

20 A Ahlerich came back in.

21 Q Did Ahlerich leave with Mortensen?

22 A Well, they was at the door, right at the door.

23 And he was like outside the door. Then Mortensen left and
24 Ahlerich stayed.

25 Q What happened then?

1 A He continued to threaten me, telling me he was
2 going to arrest my wife. And he told me even if he didn't
3 make it stick, she would have to make bail, and she might
4 not make bail, and she'd have a hard time.

5 Q Then what happened?

6 A He continued to tell me that, if I didn't co-operate,
7 you know, if I was a man I would, you know, get my wife out
8 of this mess.

9 Q At that point, did you agree to make a statement?

10 A He worked on me a while.

11 Q Was he asking other kinds of questions at that
12 time?

13 A No.

14 Q I have here Government's Exhibit 2. I ask you if
15 you recognize this signature on the front page of it.

16 A Yes.

17 Q Whose signature is that?

18 A Mine.

19 Q Do you remember signing this?

20 A Yes.

21 Q Do you remember reading it?

22 A I think I read it.

23 Q Was it read to you?

24 A No.

25 Q Why did you sign that?

1 A He told me he was going to arrest my wife if I
2 didn't sign it.

3 Q After the statement had been given, at what point
4 did you find out that -- withdraw that question.

5 Did you ever find out that your wife was going to
6 be released?

7 A After I gave the statement, they told me they was
8 going to release her.

9 Q How long after you gave the statement?

10 A Right after I gave the statement.

11 Q Do you remember someone coming into the room and
12 talking to the agents about your wife?

13 A No.

14 Q Do you remember seeing a lady agent, a woman agent?

15 A No.

16 Q Do you recall telling any agents that you had used
17 drugs?

18 A Yes.

19 Q That day?

20 A I asked them if they had followed me from the
21 methadone program.

22 Q And what did they say?

23 A Mortensen said "Oh, I started to do that; I
24 figured you were on one of those programs."

25 Q Do you remember informing Ahlerich of having taken

1 methadone?

2 A Yes. I had my methadone card with me. That's
3 the first thing they took out of my pocket, was my wallet.

4 MR. CRAIG: I have no further questions.

5 CROSS-EXAMINATION BY MR. DABROWSKI:

6 Q Mr. Marble, when was the first time you realized
7 that these individuals who put you up against the wall were
8 police officers?

9 A When they put handcuffs on me, instead of shooting
10 me.

11 Q Instead of shooting you? Did you expect you might
12 be shot?

13 A Yes.

14 Q Was that because of your involvement as a Govern-
15 ment witness in a narcotics trial in New York?

16 A Yes.

17 Q Is that the Manfredi trial?

18 A Yes.

19 Q The Gambiano family?

20 A Yes.

21 Q At the time the individuals approached you with
22 their guns drawn, was there another male with you by the
23 name of George Bailey?

24 A Yes.

25 Q What did Mr. Bailey do upon their approach?

1 A I didn't see what he did.

2 Q Did he yell and scream?

3 A I didn't hear it, because they took me directly
4 to the car, when they handcuffed me.

5 Q Did you see any other people in the area? Did a
6 crowd of people gather around your arrest? I say a "crowd";
7 did any number of people start to gather in the area?

8 A The officer informed me a crowd had gathered.
9 They asked me if my friend was crazy or something.

10 Q Your friend being George Bailey?

11 A Yes.

12 Q Did you see a crowd?

13 A No.

14 Q The officers said a crowd gathered, but you didn't
15 see a crowd?

16 A No, I was in a car.

17 Q So you got in the car, your wife was placed in the
18 car, and at that point, her pocketbook was searched?

19 A I didn't see them search it. When they put her in
20 the back of the car, one of the agents in the front asked
21 her her name, and another one said "Oh, that's Diane; that's
22 her." And he had a card in his hand, which he had to get
23 out of her bag, because he had her bag in the car.

24 Q He had to get it out of the bag? Her bag?

25 A He had to get the card out of her bag. That's

1 where the identification would be.

2 Q In other words, it is something that was in her
3 pocketbook; he held it up?

4 A Yes.

5 Q And he had the pocketbook up in the front seat?

6 A Yes.

7 Q Is that the first time any agent made a statement
8 with regard to the fact that this was Diane Marble?

9 A Yes.

10 Q Didn't you testify that an agent knew it was
11 Diane Marble because as she was getting in the car, one of
12 the agents indicated that it was her?

13 A Yes.

14 Q And was that the same agent who held up the card
15 in the front seat, or -- I assume it is the front seat?

16 A I'm not sure which agent had the card in his hand.

17 Q You said that Mr. Ahlerich worked on you for a
18 while. I think those were your words?

19 A Yes.

20 Q At the interview. Would you tell the Court
21 exactly what you mean by worked on you?

22 A To be very blunt, I had already stated that I had
23 nothing to say, nothing whatsoever. And he continued to
24 press me about this, and threatening me, that he was going to
25 arrest my wife. His exact words, some I can give you; some

1 I can't.

2 Q Did he physically harm you?

3 A Mentally -- not physically, mentally, yes.

4 Q He didn't touch you physically?

5 A No, he didn't.

6 Q But you can remember some of his exact words?

7 A Yes.

8 Q Tell the Court what those words were.

9 A That if I wouldn't give him a statement, he was
10 going to arrest my wife for aiding and abetting. And also
11 that even if he didn't make it stick, she might not make
12 bail, and would be given a hard time.

13 Q And this was Agent Ahlerich?

14 A Yes.

15 Q That was the sole reason you later gave the state-
16 ment?

17 A Yes.

18 Q Showing you Government's Exhibit 2, you say you
19 read this before you signed it?

20 A Read what?

21 Q Is this your handwriting? I'm referring to Page
22 2, the second line from the bottom of the page, beginning
23 "I, Horace Marble".

24 A Yes.

25 Q Is that your writing?

1 at least one individual that I received information
2 concerning.

3 THE COURT: Well, if that is the grounds,
4 the Court will sustain the objection on relevancy.
5 If it were offered for credibility, the conviction
6 of a felony is grounds to affect credibility of
7 the witness.

8 MR. DABROWSKI: As I previously stated, your
9 Honor, this is in addition to being offered to
10 adjudge his credibility.

11 THE COURT: The Court will sustain it on the
12 question of relevancy in respect to the sentences
13 that somebody else got. Whether he got a two year
14 sentence or a five year -- whatever it was -- it
15 is a felony; he was convicted and got a felony
16 record for possessing and distributing narcotics.

17 It is admissible for purposes of attacking
18 his credibility.

19 BY MR. DABROWSKI:

20 Q Mr. Marble, am I correct in stating that the only
21 reason you gave this statement was because Mr. Ahlerich
22 made statements to you that your wife would be arrested for
23 aiding and abetting charges, and she probably wouldn't be
24 able to make bail, and it would be hard on her?

25 A Not only because he said it, but because Mr.

1 Mortensen said it, also.

2 Q Is there any other reason why you gave the state-
3 ment?

4 A No.

5 MR. DABROWSKI: I have no further questions.

6 REDIRECT EXAMINATION BY MR. CRAIG:

7 Q Government's Exhibit 2, of which Mr. Dabrowski
8 referred you to, on the second and third pages, where the
9 words appear, which the agent testified was in your hand-
10 writing; did you, in fact, write the bottom two lines on
11 Page 2, and the top three lines on Page 3?

12 A Yes.

13 Q Were those your words?

14 A No.

15 Q Did someone tell you to write those things?

16 A Mr. Mortensen.

17 Q Mr. Mortensen told you to?

18 A Yes.

19 Q Now, with respect to the methadone that you took
20 at the beginning of the day, did you feel -- at noon, you
21 testified -- were you feeling the effect of that drug in
22 any way?

23 A Yes, I have to feel it.

24 Q Can you describe to the Court what effect that
25 drug has on you?

1 and for my arrest also if I was picked up with him.

2 Q Did you ask the agent what you were being arrested
3 for?

4 A Yes.

5 Q What did he say?

6 A Harboring a fugitive.

7 THE COURT: For what again? It wasn't too
8 clear.

9 THE WITNESS: Harboring a fugitive.

10 THE COURT: He didn't say anything about
11 aiding and abetting? Harboring a fugitive, is
12 that it?

13 THE WITNESS: Yes, I think so.

14 THE COURT: All right.

15 BY MR. CRAIG:

16 Q Do you recall at anytime an agent saying to you
17 that you were under arrest?

18 A He just said he had a warrant for my arrest.

19 Q Did he show you a warrant?

20 A No.

21 Q Did he show your husband a warrant?

22 A No.

23 Q At what point did you find out that they were
24 agents of the Federal Government?

25 A Well, when the agent handcuffed me, he showed me,

1 you know, he opened a wallet and showed me a picture.

2 Q This was before you got into the car?

3 A Yes.

4 Q Did he handcuff you in front or in back?

5 A In back.

6 Q When you got in the car, where were you sitting in
7 the car?

8 A I was sitting next to the door, on your left.

9 My husband was sitting in the middle, and the agent was
10 sitting on the other side of him.

11 Q And do you recall having an opportunity to observe
12 your husband at all? Did you watch him, see him, notice him?

13 A Yes.

14 Q What did you notice?

15 A Well, they had the handcuffs on too tight, and he
16 was asking them to make them loose.

17 Q And in your opinion, was he scared?

18 A Yes.

19 Q What makes you think that he was scared?

20 A His actions, you know, to look in his face, he
21 seemed like he was afraid.

22 Q Was there any conversation in the car at the time
23 you were in the car?

24 A He asked him where they were taking us. At first,
25 they wouldn't tell us, until they got close to where we

1 were going. And one of the agents told him if he hassled
2 him that he was going to hassle me.

3 Q Let's back up a little bit. One of the agents
4 said to you --

5 A Said to him.

6 Q Said to --?

7 A My husband.

8 Q To Horace Marble? What did he say, exactly?

9 A That if Horace hassled them in any way that they
10 were going to hassle me.

11 THE COURT: What does "hassle" mean?

12 THE WITNESS: Gave him any kind of trouble,
13 or didn't co-operate, I guess.

14 Q That is what you understood it to mean, right?

15 THE WITNESS: Yes.

16 BY MR. CRAIG:

17 Q Was there any other conversation that went on?

18 A No.

19 Q What happened when you got to the FBI Headquarters?

20 A They took us up in the building -- I don't re-
21 member what floor it was -- they took us both in the same
22 room. And then they took me out, and a woman agent searched
23 me. And they put me in -- they brought me back in the room,
24 and they searched my husband.

25 Q Did they search your husband in your presence?

1 A Yes.

2 Q What kind of a search was it, if you recall?

3 A A full search, I guess, you know.

4 Q Did they pat him down? Did they take off his
5 clothes?

6 THE COURT: Let her tell you. What was the
7 search of your husband?

8 THE WITNESS: He had to take his shoes off
9 and take his pants down, or off -- take his
10 underwear down.

11 THE COURT: You were there?

12 THE WITNESS: Yes.

13 THE COURT: In the same room?

14 THE WITNESS: Yes.

15 THE COURT: In other words, he was stripped
16 naked in the room?

17 THE WITNESS: He wasn't naked; he had on
18 his undershirt, his tee shirt, and they made him
19 take his pants -- took his pants off.

20 BY MR. CRAIG:

21 Q Did he take his pants all the way off, or did he
22 just lower them?

23 A I think he took them off.

24 Q All the way?

25 THE COURT: Did they search his body, otherwise?

1 THE WITNESS: Yes.

2 THE COURT: What else did they do?

3 THE WITNESS: They made him take off his
4 shoes and searched in his shoes; searched in
5 between his legs, and his backside, and, you know,
6 gave him a frisk all the way down.

7 THE COURT: All right.

8 BY MR. CRAIG:

9 Q Can you recall at what point you were told that
10 you could go?

11 A I asked one of the agents could I leave?

12 Q Was this before you had been searched?

13 A No, this was after.

14 Q This was after you had been searched?

15 A And he said he thought Horace had co-operated,
16 so I could leave.

17 Q Do you remember which agent that was?

18 A The agent to your left.

19 Q That is Agent Ahlerich.

20 THE COURT: The one with the red tie?

21 THE WITNESS: The one with the red tie is
22 the one that he thought Horace had co-operated.

23 But the one on your right is the one that told me
24 I could leave.

25 Q The one on your right?

1 A Is the one that said I could leave.

2 MR. CRAIG: Let the record show that was Mr.
3 Mortensen.

4 THE COURT: Correct. Fortunately, they have
5 different colored ties here today.

6 MR. CRAIG: I have no further questions.

7 CROSS-EXAMINATION BY MR. DABROWSKI:

8 Q Mrs. Marble, you said that Mortensen told you you
9 could go after Mr. Ahlerich said that Horace had co-operated?

10 A Yes.

11 Q Were either of those agents with you when -- you
12 were searched, right?

13 A Yes.

14 Q Were either of those agents in your presence when
15 you were searched?

16 A No.

17 Q They were with you when you arrived at the building?

18 A Yes.

19 Q You went to an elevator and were taken to another
20 floor on that building?

21 A Yes.

22 Q What happened when you got out of the elevator?
23 Who went where?

24 A We went into a room together.

25 Q Who is "we"?

1 THE COURT: Nobody told you that either?

2 THE WITNESS: No.

3 THE COURT: Did your husband say anything to
4 you when you were in the room with the two agents,
5 at the time they were talking to him?

6 THE WITNESS: He said to me he was going to
7 sign a confession, because he was afraid that
8 they were going to lock me up.

9 THE COURT: He said that in the presence of
10 the agents?

11 THE WITNESS: No. Just my husband and I were
12 in the room together. A

13 THE COURT: This was afterwards; is that
14 right? After he signed the statement?

15 THE WITNESS: No, this was before.

16 THE COURT: Before he signed it? When were
17 you together, alone? Before he signed the state-
18 ment, or afterwards?

19 THE WITNESS: Before.

20 THE COURT: Maybe you can develop that. It
21 isn't too clear to me. I got the impression that
22 they were together after this statement was signed.

23 BY MR. CRAIG:

24 Q Are you certain in your own mind at what point
25 your husband signed the statement?

1 A I don't understand.

2 Q Well, did you know that he had in fact signed the
3 statement when you were with him alone?

4 A No, he hadn't signed it.

5 Q He told you he hadn't signed it?

6 A He hadn't signed it, yes.

7 Q But you met with him alone, and he said that he
8 was going to sign the statement?

9 A Yes.

10 Q And did he tell you why?

11 A Because he was afraid that they were going to
12 arrest me. He was afraid that I was afraid of being arrested.
13 And he was going to sign the confession.

14 THE COURT: What did you say to him?

15 THE WITNESS: I didn't say anything to him.

16 THE COURT: Did you say "Horace, did you do
17 it? If you didn't, don't sign the confession."

18 Didn't you say anything to him?

19 THE WITNESS: I just told him I was afraid
20 of being arrested.

21 THE COURT: But you didn't know what for?

22 THE WITNESS: The only thing I knew is what
23 they said to me in the car, because they had
24 picked me up with him.

25 THE COURT: Did he tell you what he signed

1 A No, sir.

2 Q Did you make any statement whatsoever --

3 A No, sir.

4 Q Did you make any promises of any nature to Mr.

5 Marble, at any time, prior to his signing that statement?

6 A No, sir.

7 MR. DABROWSKI: I have no further questions.

8 THE COURT: Any further questions, Counselor?

9 CROSS-EXAMINATION BY MR. CRAIG:

10 Q In your own mind, can you conceivably think of
11 anything that you could have said that might have left the
12 Defendant thinking that what he decided to do would deter-
13 mine the future of his wife?

14 A No, sir, on the contrary.

15 Q Did you ever talk about his wife, with the Defen-
16 dant?

17 A I talked to the fact -- I said "You'll get a
18 chance to see her before you leave here today", when he
19 asked me about her.

20 Q Was that before or after the statement?

21 A That was during the statement, or before the
22 signing of the statement. He said "I'd like to see my wife."
23 I said "You'll get a chance to see her before she leaves
24 here today."

25 Q Did you talk about his wife before he gave the

1 statement?

2 A That's all that was said, that I recall about his
3 wife at that time. He inquired about her; I said "You'll
4 have an opportunity to speak to her before you or she leaves
5 the building here today."

6 Q Now, were you conducting an in-depth interview of
7 him at the time he said he wanted to give a statement? Is
8 that correct? That was the early testimony, I believe.

9 A Yes, sir.

10 Q Did you ask him if he was married?

11 A Yes, sir.

12 Q Did you ask him about his wife?

13 A I asked him his wife's name, I believe.

14 Q You asked if she was employed?

15 A I probably would have. I don't recall asking
16 that question.

17 Q Did you ask him whether he lived with her?

18 A Yes, I did.

19 Q So you inquired as to whether or not he had been
20 living with her?

21 A I would have, in the background part of the
22 interview.

23 Q Did you ask for her address?

24 A Specifically, I don't recall, but I imagine I
25 would have.

1 Q You could have?

2 A Yes, sir, probably.

3 Q There are all sorts of things you might have in-
4 quired in your in-depth interview of him about his wife;
5 isn't that right?

6 A In the nature of the background information,
7 that's correct.

8 MR. CRAIG: Thank you.

9 REDIRECT EXAMINATION BY MR. DABROWSKI:

10 Q Mr. Ahlerich, during this interview, this in-depth
11 interview, did Mr. Marble fill out any forms?

12 A He signed the forms that you have seen here today.
13 And that is the extent of it.

14 Q Other than the documents which are in evidence,
15 Government's Exhibits 1 and 2?

16 A No, sir.

17 Q Mr. Marble did not place his signature on any
18 other forms?

19 A No, sir.

20 Q Did he fill out any other forms?

21 A No, sir.

22 Q Is it standard procedure to have the Defendant
23 fill out any forms?

24 A Not in this particular circumstance. If we were
25 asking him for a waiver, to allow us to search an apartment,

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 75-1058

UNITED STATES OF AMERICA

Appellee

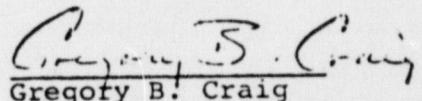
vs.

HORACE MARBLE

DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Brief
and Appendix of the defendant-appellant in
the above matter was mailed postage pre-paid
to Albert S. Dabrowski, Esq., Assistant
United States Attorney, Hartford, Connecticut


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